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Town Clerk.

New York (State) Laws, statutes, &
= etc. Highway law.
THE

Town and Highway Laws.

OF THE

STATE OF NEW YORK,

CONSISTING OF

CHAPTERS 19 AND 20 OF THE GENERAL LAWS,

AS REVISED BY THE

STATUTORY REVISION COMMISSION,

TOGETHER WITH

CAREFULLY PREPARED FORMS.

By MILO M. ACKER AND L. M. COWLES.

ALBANY, N. Y:
JAMES B. LYON, LAW PUBLISHER.
1891.

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P R E F A C E .

The authors of this volume offer no apology for its publication. It has long been manifest to every observer of town affairs, that the laws governing towns and highways were not familiar to town officers and persons interested in the management of town business; neither has it been possible for the average business man to obtain a copy of the law dealing exclusively with town and highway. It has been the object of the compilers of this work to take the text of the town and highway laws, insert therein carefully prepared forms, provide it with a full and complete index, and so far as possible bring these new chapters of the statutes into a handy form for use by the busy man or newly elected officer, who has no time to search through large volumes containing many pages of references and citations, in order to learn the simplest rule of law governing his conduct as an official or citizen.

The work is divided into two parts. The first, entitled Highway Law, the second, Town Law. After each section requiring it, is inserted the proper form, thus enabling the officer to see at a glance what action, if any, he should take to carry out its provisions.

Many men are elected to town office who have had no previous experience in town business, and are, therefore, in doubt as to their first and simplest duty. If this volume shall be an aid to them in discharging their official duties, and a help to the common citizen who desires to become familiar with the law he is striving to obey, it will have accomplished the object of

THE AUTHORS.

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THE HIGHWAY LAW.

BEING CHAPTER 568, LAWS OF 1890.

AN ACT in relation to highways, constituting chapter nineteen of the general laws.—[Approved by the Governor June 7, 1890.]

CHAPTER NINETEEN OF THE GENERAL LAWS.

THE HIGHWAY LAW.

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SECTION 1. Short title.—This chapter shall be known as the highway law.

§ 2. Treasurer of highway commissioners.—When there is more than one commissioner of highways in any town, they shall designate one of their number to be treasurer. If they fail so to do, the commissioner longest in office shall be the treasurer; and all money collected for highway purposes, or belonging to the highway fund of the town, shall be paid to him. Before receiving such money, he shall execute to the town an undertaking, to be approved by the supervisor, to the effect that he will faithfully account and pay over to any officer or person entitled thereto, any money that may come into his hands as such treasurer.

No. 1.—§ 2.**Undertaking of the Treasurer of Highway Commissioners.**

Whereas, the commissioners of highways of the town of....., in the county of....., have designated A B, one of their number, to be treasurer, pursuant to section 2 of the highway law; now, therefore, we, the said A B, and L M, as his surety (or sureties, as the case may be), do hereby jointly and severally undertake to and with the said town that the said A B will faithfully account and pay over to any officer or person, entitled thereto, any money that may come into his hand as such treasurer.

Dated this day of, 18...

A B.
L M.

STATE OF NEW YORK, }
COUNTY OF } ss.:

On this....day of....., 18 , before me personally appeared the above-named A B and L M, to me personally known to be the same persons described in and who executed the foregoing undertaking, and severally acknowledged that they executed the same.

G H,
Justice of the Peace.

The supervisor may require an affidavit of justification as follows:

STATE OF NEW YORK, }
COUNTY OF } ss.:

L M and....., above named, being duly and severally sworn, each for himself, says that he is a resident of and a householder, or freeholder, within the State, and is worth.....dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale under execution.

L M.

Subscribed and sworn to before me:)
this... day of....., 18...)

G H,
Justice of the Peace.

(Approval.)

I approve of the within (or foregoing) undertaking, and of the sufficiency of surety (or sureties) therein named.

Dated this....day of....., 18...

B S,
Supervisor of

§ 3. Powers of one commissioner.— When any town has but one commissioner of highways, the term, commissioners of highways, when used in this chapter, shall mean such one commissioner.

§ 4. General powers of commissioner.— The commissioners of highways in the several towns, shall have the care and superintendence of the highways and bridges therein, except as otherwise specially provided in relation to incorporated villages, cities and other localities; and they shall

1. Cause such highways and bridges to be kept in repair, and give the necessary directions therefor;

2. Cause such highways as shall have been laid out, but not sufficiently described, and such as shall have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the town clerk's office;

3. From time to time, not oftener than once a year, divide the town into so many highway districts as they shall judge convenient, by writing, under their hands, to be filed with the town clerk, and by him to be entered in the town book, at least ten days before an annual town meeting;

4. Assign to each of the highway districts such of the inhabitants and corporations liable to work on highways, as they shall think proper, having regard to proximity of residence as much as may be;

5. Within one week after each annual town meeting, make and file with the town clerk, a written appointment of a resident of each district, to be overseer of highways therein. The town clerk shall notify each overseer of his appointment, within ten days after the filing thereof; and the person so appointed and notified, shall thereupon become and be the overseer of highways within his district for one year, and until his successor shall be appointed. If any person so appointed overseer, shall refuse to serve, or his office shall become vacant, the commissioners shall in like manner appoint some other person to be overseer;

6. Require overseers of highways to warn all persons and corporations assessed to work on highways, to come and work thereon, with such teams and implements, and at such times as the said commissioners, or any one of them shall direct;

7. Expend all moneys raised and collected from the town at large for highway purposes, upon the

highways and bridges situated in, or upon the borders of the town, or highway districts assigned to the town in which such moneys were raised and collected, in such proportion as they may deem just and proper.

(See chap. 212, § 4, subd. 8, Laws of 1891, pp. 220-221.)

No. 2.—§ 4, sub. 3; § 33, subs. 3-5.

Division of Town into Highway Districts.

The undersigned, commissioners of highways of the town of, in the county of, hereby divide the highways of said town into districts as follows:

District No. 1 shall comprise (here insert the description thereof, and in like manner of all the other districts).

And we hereby assign to each of said districts the inhabitants and corporations, respectively, residing or located therein and liable to work on highways. (Or if any person or corporation is assigned to a highway district of which he or it is not an inhabitant, or located, but is liable to be assessed for highway labor therein, it must be so stated.)

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 3.—§ 4, sub. 5.

Appointment of Overseers of Highways.

The undersigned, commissioners of highways of the town of, in the county of, hereby appoint overseers of the highways of said town for the ensuing year, as follows:

District No. 1.—J K

District No. 2.—L M

District No. 3.—T W

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 3½.—§ 4, sub. 5.

Notice to Overseer of Highways of His Appointment.

COUNTY OF..... }
TOWN OF } ss.:

To L M:

Please take notice that you have been appointed by the commissioner of highways, overseer in highway district No. in

the town of....., county of....., N. Y., for the ensuing year; and you are hereby required to report to the town clerk, within sixteen days after receiving this notice, the names of all the taxable inhabitants and corporations in your highway district liable to be assessed for highway labor therein.

Dated this....day of....., 18...

O P,
Town Clerk.

§ 5. Mile-stones and guide-boards. — Commissioners of highways may cause mile-boards or stones to be erected upon the highways in their town as they think proper; they shall also cause guide-posts, with proper inscriptions and devices, to be erected at the intersections of such highways therein, as they may deem necessary, which shall be kept in repair, at the expense of the town, by the overseers of the highways of the districts in which they are respectively located.

§ 6. Road machines and implements. — Commissioners of highways may, upon the request of one or more overseers of the highway districts of their town, contract for and purchase for such district or districts, upon credit or otherwise, a good and sufficient iron or steel-shod scraper, road machine and plow, or either of them, for the use of such district or districts, which shall be used, cared for and owned by such district or districts jointly. Such implements shall be paid for out of the highway tax of the district or districts for which they are purchased, and may be paid for in annual installments, not exceeding five. If purchased for more than one district, the amount paid by each shall be in proportion to the amount of its highway tax. No more than one-half of the highway tax of any district shall be applied in payment therefor in any one year. The portion of such tax so applied, shall be

required to be paid in money, and be assessed and levied, upon the property of such district or districts, and collected in the same manner as other town charges are assessed, levied and collected, except that the amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum as certified by the town board, to be levied upon the taxable property of such highway districts.

§ 7. Stone-crushers and materials.—The commissioners of highways of any town may, when authorized by a majority vote of the electors voting thereon, by ballot, at the annual or at a special town meeting, purchase a machine for crushing stone, to be used for the improvement of the highways of the town, and when so authorized, may also expend a sum not exceeding two thousand dollars in any one year, for the purpose of purchasing stone, and quarrying, breaking, crushing and placing the same on the highways, and defraying the expenses of operating such machine; and shall present the account and vouchers for such purchases and expenses to the town board for audit, and the amount audited shall be levied and collected as other town audits.

§ 8. Custody of stone-crushers.—Such machine, when purchased, shall be under the care and custody of the commissioners of highways of the town; and where there is an incorporated village constituting a separate highway district, in any town, they may, by an agreement with the trustees of the village, permit an equitable use of the machine to such separate village district.

§ 9. **Additional tax.**—Whenever the commissioners of highways of any town shall determine, that the the sum of five hundred dollars will be insufficient to pay the expenses actually necessary for the improvement of highways and bridges, they may cause a vote to be taken by ballot at any town-meeting, to be duly called, authorizing such additional sum to be raised as they may deem necessary for such purpose, not exceeding one-third of one per centum upon the taxable property of the town, as shown by the last assessment-roll thereof.

§ 10: **Extraordinary repairs of highways or bridges.**—If any highway or bridge shall at any time be damaged or destroyed by the elements or otherwise, the commissioner of highways of the town in which such highway or bridge may be situated, may, with the consent of the town board, cause the same to be immediately repaired or rebuilt, although the expenditure of money required may exceed the sum raised, or authorized to be raised, for such purposes as hereinbefore provided; and the commissioners of highways shall present the proper vouchers for the expenses thereof, to the town board, at their next annual meeting, and the same shall be audited by them and collected in the same manner as amounts voted at town meetings.

No. 4.—§ 10.

Consent of Town Board.

COUNTY OF..... }
TOWN OF } ss.:

At a special meeting of the town board of said town, called by the supervisor (or town clerk) thereof, held on this....day of, 18.., the following preamble and resolution was adopted:

WHEREAS, The highway (or bridge), known as (here describe it), was destroyed by (describe how), on, 18.. (or has

become damaged), and there not being sufficient moneys in the hands of the commissioners of highways to rebuild (or repair) the same; therefore, be it

Resolved, That we do hereby consent that the commissioners of highways of the town of cause said highway (or bridge) to be immediately rebuilt (or repaired) according to law.

(Town board sign here.)

No. 5.—§ 10.

Town Clerk's Certificate to Transcript.

TOWN OF }
OFFICE OF TOWN CLERK. } ss.:

I do hereby certify that I have compared the above transcript of the proceedings of the town board of said town, at a special meeting held on the....day of.....18.., with the original record thereof in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Dated this....day of....., 18...

O P,
Town Clerk.

§ 11. Auditing expense thereof.—The town board may be convened in special sessions by the supervisor, or in his absence, by the town clerk, upon the written request of any commissioners of highways, and the bills and expenses incurred in the erection or repairs of any such highways or bridges, may then be presented to, and audited by the town board; and the supervisor and town clerk shall issue a certificate, to be subscribed by them, setting forth the amount so audited and allowed, and in whose favor, and the nature of the work done and material furnished, and such certificate shall bear interest from its date, and the amount thereof, with interest, shall be levied and collected in the same manner as other town expenses.

No. 6.—§ 11.

Request for Special Session of Town Board to Audit Expenses.

To the Supervisor (or Town Clerk) of the Town of....., in the County of.....:

The undersigned commissioners of highways of said town, do hereby request that the town board be convened in special

session, for the purpose of auditing the bills and expenses incurred in the erection (or repair) of the highway (or bridge) under the consent given by said board on the ... day of, 18...

Dated this....day of....., 18...

**A B,
C D,
E F.**

Commissioners of Highways.

No. 7.—§ 11.

Certificate of Supervisor and Town Clerk.

COUNTY OF..... }
TOWN OF..... } 88.:

The undersigned, supervisor and town clerk of said town, do hereby certify that at a special session of the town board this day held, for the purpose of auditing and allowing the bills and expenses incurred by the commissioners of highways of said town, under the consent given by said town board, on the...day, 18.., the following bills and accounts were audited and allowed, with interest:

Date.	IN WHOSE FAVOR.	Nature of work done and material furnished.	Amount allowed.
<div data-bbox="289 843 318 857">26-</div>			

Dated this....day of....., 18...

R S,
Supervisor.
O P,
Town Clerk.

§ 12. Accounts, how made out.—No account for services rendered, or material furnished according to the provisions of this chapter, shall be allowed by such board unless the same shall be verified in the same manner as town accounts are required by law to be verified, nor unless the commissioners of highways shall certify that the service has been

actually performed and the material was actually furnished, and that the same was so performed or furnished by the request of such commissioners; and the town board may require and take such other proof as they may deem proper, to establish any claim for such labor and material, and the value thereof.

No. 8.—§ 12.

Account with Verification, and Certificate of Commissioners of Highways.

THE TOWN OF....., TO L M, *Dr.*

January, 18.., to.....(days' labor on)..... \$

January, 18.., to.....(feet of plank)

Total \$

L M.

COUNTY OF..... }
TOWN OF..... } ss.:

L M, being duly sworn says, he is the claimant in the above account, and that the items of said account are correct, and that the disbursements and services charged therein have been in fact made or rendered, and goods supplied, and that no part of the same has been satisfied.

L M.

Subscribed and sworn to before me, }
this....day of....., 18... }

G H,

Justice of the Peace.

COUNTY OF..... }
TOWN OF..... } ss.:

The undersigned, commissioners of highways of said town, do hereby certify that in the foregoing account of L M the services mentioned were actually performed, and the material mentioned was actually furnished, and the same was so performed and furnished at our request.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 13. **Unsafe toll-bridge.**—Whenever complaint in writing, on oath, shall be made to the commissioners of highways of any town in which shall be, in whole

or in part, any toll-bridge belonging to any person or corporation, representing that such toll-bridge has from any cause become, and is unsafe for the public use, such commissioners of highways shall forthwith make a careful and thorough examination of such toll-bridge, and if upon the examination thereof, they shall be of the opinion that the same has from any cause become dangerous or unsafe for public use, they shall thereupon give immediate notice to the owners of such toll-bridge, or to any agent of such owners, acting as such agent, in respect to such bridge, that they have, on complaint made, carefully and thoroughly examined the bridge, and found it to be unsafe for the public use. Such owners shall thereupon immediately commence repairing the same, and cause such repairs to be made within one week from the day of such notice given, or such reasonable time thereafter as may be necessary to thoroughly repair the bridge, so as to make it, in all respects, safe and convenient for public use; and for neglect to take prompt and effective measures so as to repair the bridge, its owners shall forfeit twenty-five dollars; and shall not demand or receive any toll for using the bridge, until the same shall be fully repaired; and the commissioners of highways shall cause such repairs to be made, and the owners of the bridge shall be liable for the expense thereof, and for the services of the commissioners at two dollars per day; and upon the neglect or refusal to pay the same upon presentation of an account thereof, the commissioners of highways may recover the same by action, in the name of the town.

No. 9.—§ 13.

Complaint that Toll-bridge is Unsafe.

COUNTY OF..... }
TOWN OF..... } ss.:

L M, being duly sworn, complains on oath to the commissioners of highways of the town of....., in the county of....., that he believes the toll-bridge belonging to....., situated on the (give name of stream), at (describe place), has become and is unsafe for public use and travel; and that the reasons for his belief are as follows (set forth reasons).

L M.

Subscribed and sworn to before me, }
this....day of....., 18... }

G H,
Justice of the Peace.

No. 10.—§ 13.

Notice to Owners of Toll-bridge.

To (owners or agent of the owners, acting as agent in respect to such bridge, as the case may be):

You are hereby notified that the commissioners of highways of the town of....., in the county of....., have, on complaint made, carefully and thoroughly examined the toll-bridge situated on the....., at (describe the situation), and found it to be unsafe for public use and travel. (State briefly wherein it is unsafe.)

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 14. Water pipes in highways.—The commissioners of highways may, upon written application of any resident of their town, grant written permission to lay and maintain water pipes and hydrants under ground, within the portion therein described, of any highway within the town, but not under the traveled part of the highway, except across the same, for the purpose of supplying premises with water, upon condition that such pipes and hydrants shall be so laid as not to interrupt or interfere with public

travel upon the highway; and the applicant shall replace all earth removed, and leave the highway in all respects in as good condition as before the laying of such pipes.

No. 11.—§ 14.

Application to Lay Water-pipes in the Highway.

*To the Commissioners of Highways in the Town of.....,
in the County of.....*

The undersigned, an inhabitant of the said town of....., does hereby make application to you for permission to lay and maintain water-pipes and hydrants under ground, within the highways of said town, pursuant to section 14 of the highway law, as follows: (Here describe where the pipes are proposed to be laid.)

Dated this....day of....., 18...

L M.

No. 12.—§ 14.

Permission to Lay and Maintain Water-pipes in Highway.

The undersigned, commissioners of highways of the town of....., in the county of....., on the written application of L M, do hereby grant permission to the said L M to lay and maintain water-pipes and hydrants under ground within the highways of said town, as follows: (Here describe where the pipes are to be laid.) But such pipes are not to be laid under the traveled portion of the highway, except to cross the same for the purpose of supplying premises with water; and this permission is upon condition that such pipes shall be so laid as not to interrupt or interfere with public travel upon the highway, and that the applicant shall replace all earth removed, and leave the highway in all respects in as good condition as before the laying of such pipes.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 15. Actions for injuries to highways.—The commissioners of highways may bring an action, in the name of the town, against any person or corporation, to sustain the rights of the public in and to any highway in the town, and to enforce the per-

formance of any duty enjoined upon any person or corporation in relation thereto, and to recover any damages sustained or suffered or expenses incurred by such town, in consequence of any act or omission of any such person or corporation, in violation of any law or contract in relation to such highway.

§ 16. Liability of towns for defective highways.— Every town shall be liable for all damages to person or property, sustained by reason of any defect in its highways or bridges, existing because of the neglect of any commissioner of highways of such town. No action shall be maintained against any town to recover such damages, unless a verified statement of the cause of action shall have been presented to the supervisor of the town, within six months after the cause of action accrued; and no such action shall be commenced until fifteen days after the service of such statement.

No. 13.— § 16.

Verified Statement of Cause of Action.

To R S, Supervisor of the Town of....., in the County of.....:

I claim a cause of action against the said town of....., by reason of defects in the highway (or a bridge) in said town, and the following is a statement of such cause of action:

(Here state cause of action as in a complaint in an action.)

Dated this.... day of..... 18...

L M.

(Verification the same as to complaint in an action.)

§ 17. Action by town against commissioners.— If a judgment shall be recovered against a town for damages to person or property, sustained by reason of any defect in its highways, or bridges, existing because of the neglect of any commissioner of highways, such commissioner shall be liable to the town

for the amount of the judgment, and interest thereon; but such judgment shall not be evidence of the negligence of the commissioners in the action against him.

§ 18. **Audit of damages without action.**—The town board of any town may audit as a town charge, in the same manner as other town charges are audited, any one claim not exceeding five hundred dollars, for damages to person or property, heretofore or hereafter sustained by reason of defective highways or bridges in the town, if in their judgment it be for the interest of the town so to do; but no claim shall be so audited, unless it shall have been presented to the supervisor of the town, within six months after it accrued, nor if an action thereon shall be barred by the statute of limitations. The town board may also audit any unpaid judgment heretofore or hereafter recovered against a commissioner of highways for any such damages, if such town board shall be satisfied that he acted in good faith, and the defect causing such damage did not exist because of the negligence or misconduct of the commissioner, against whom such judgment shall have been recovered.

§ 19. **Reports of commissioners.**—The commissioners of highways of each town shall make to the town board, at its first meeting in each year, a written report stating,

1. The labor assessed and performed,
2. The sum received by them for penalties, commutations and all other sources, and an itemized account of all moneys paid out during the year, with receipts in full by the respective parties to whom such money was paid;

3. The improvements which have been made on the highways and bridges, during the year immediately preceding such report, and the state of such highways and bridges; they shall also make at the second meeting of said board in each year, a statement of the improvements necessary to be made on such highways and bridges, and an estimate of the probable expense thereof, beyond what the labor to be assessed in that year will accomplish; a duplicate of which shall be delivered by the commissioners to the supervisor of the town, who shall present such duplicate statement to the board of supervisors, who shall cause the amount so estimated, not exceeding five hundred dollars in any one year, to be assessed, levied and collected, in such town, in the same manner as other town charges.

No. 14.—§ 19.

Commissioners' Report to First Meeting of Town Board.

The undersigned, commissioners of highways of the town of....., in the county of....., hereby render to the town board of said town, the following report:

1. The highway labor assessed in said town for the year ending 18.., was.... days; and the highway labor performed in said town during the said year was.... days, as appears by the accounts rendered us by the several overseers of highways in said town.

2. The said commissioners have received during the said year the following sums of money for fines and commutations, and from other sources:

Date.	FROM WHOM RECEIVED.	On what account.	Amount.

3. They have paid out during the said year, for which they have receipts in full, the following sums:

Date.	TO WHOM PAID.	On what account.	Amount.

4. The improvements which have been made on the highways and bridges in said town during said year are as follows: (Specify improvements.) And the highways and bridges in said town are (specify the condition they are in).

Dated this....day of February, 18...

A B,
C D,
E F,

Commissioner of Highways.

No. 15.—§ 19.

Commissioners' Report to Second Meeting of Town Board.

The undersigned, commissioners of highways of the town of, in the county of, hereby render to the town board of said town, the following report:

1. The following improvements are necessary to be made on the highways and bridges in said town during the next fiscal year, viz.: (Here specify the improvements deemed necessary.)

2. The probable expense of making such improvements beyond what the labor to be assessed will accomplish, is by us estimated at \$.....

Dated this....day of November, 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 20. General duties of overseers.— Each overseer of highways in every town, shall

1. Repair and keep in order the highways within his district.

2. Warn all persons and corporations assessed to work on the highways in his district, to come and work thereon.

3. Cause the noxious weeds within the bounds of the highway within his district, to be cut down or destroyed twice in each year, once before the first day of July, and again before the first day of September; and the requisite labor therefor shall be considered highway work.

4. Collect all fines and commutation money, and execute all lawful orders of the commissioners.

5. Cause all loose stones lying on the beaten track of every highway within his district, to be removed once in every month, from the first day of April until the first day of December.

6. Cause the monuments erected or to be erected, as the boundaries of highways, to be kept up and renewed, so that the extent of such highway boundaries may be publicly known.

§ 21. **Opening obstructed highways.**—Whenever the labor in any district has been worked out, commuted for, or returned to the supervisor, and the highways are obstructed by snow, or otherwise, and notice has been given to the overseer, in writing, by any two or more inhabitants of the town, liable to payment of highway tax, requesting the removal of such obstruction, the overseer of highways in such district, shall immediately call upon all persons and corporations liable to highway tax therein, to assist in removing such obstructions; and such labor, so called for by the overseer, shall be assessed upon those liable to perform the same, in proportion to their original assessments. And all persons so called out and failing to appear at the place designated by the overseer, or to commute at a dollar a day, within twenty-four hours after due notice, shall be liable to a fine at the rate of one dollar and

fifty cents a day, for each day's labor they may be required to perform, which fine shall be collectible by the overseer, as such, by action in justice's court, and shall be applied to the purposes specified in this section. The overseer shall be liable to a penalty of five dollars per day, for every day he neglects, without good and sufficient reasons, to have such highway opened without delay after receiving such written notice, the penalty to be collected in justice's court, by the person first suing for the same, and the penalty shall be paid over to the commissioners of highways, for the use of the town.

No. 16.—§ 21.

Notice to Remove Obstructions.

*To L M, Overseer of Highway District No....., of the Town of
....., in the County of.....:*

We, the undersigned inhabitants of said town, liable to payment of highway tax, hereby give notice that the highway in said district is obstructed by snow (or otherwise) at (describe where), and request that you forthwith proceed to remove said obstruction.

Dated this....day of....., 18...

J K.
T W.

§ 22. Penalties against overseers.—Every overseer of highways who shall refuse or neglect,

1. To warn the persons and corporations assessed to work on the highways, when he shall have been required so to do, by the commissioners or either of them.

2. To collect the moneys that may arise from fines or commutations.

3. To perform any of the duties required by this chapter, or which may be enjoined on him by the commissioners of highways of his town, and for the omission of which no other penalty is provided, shall for every such refusal or neglect, forfeit the sum of ten dollars.

§ 23. Penalties, how collected.— The commissioners of highways shall prosecute, in the name of the town, every overseer of highways, for any penalties known to the commissioners to have been incurred by the overseer. They shall also upon the complaint of any resident of the town, that any such penalty has been incurred, prosecute such overseer therefor, if satisfied that the complaint is well founded. The costs and expenses incurred by the commissioners in good faith, in such proceedings, shall be a town charge, to be audited by the town board. If the commissioners refuse or neglect to prosecute for any such penalty, for thirty days after such complaint shall have been made, the complainant may prosecute therefor in the name of the town, upon indemnifying the town for the costs and expenses of such prosecution, in such manner as the supervisor may approve. If the commissioners shall neglect or refuse to prosecute for any such penalty, knowing that the same has been incurred, he shall be liable to a penalty of ten dollars for every such neglect or refusal, to be recovered by action, in the name of the town, brought by the supervisor, or by any taxpayer of the town who may indemnify the town, for the cost and expenses of the action, in such manner as the supervisor may approve.

§ 24. Compensation of overseers.— If any overseer shall be employed more days in executing the several duties enjoined upon him by this chapter, than he is assessed to work on the highways, he shall be paid for the excess, at the rate of twelve and a half cents per hour for each day, and be allowed to retain the same out of the money which may come into his hands under this chapter; but he shall not be permitted to commute for the days he is assessed.

ARTICLE II.

ASSESSMENT FOR HIGHWAY LABOR.

SECTION 30. Meetings of commissioners.

31. Lists of inhabitants.
32. Non-resident lands.
33. Assessments of highway labor, how made.
34. Copies of lists delivered to overseers.
35. Names omitted.
36. Appeals by non-residents.
37. Credit on private roads.
38. Certain assessments to be separate.
39. Tenant to deduct assessment.
40. Reassessment in case of neglect.
41. Omissions of assessors corrected.
42. New assessments by overseers.
43. Sidewalks and trees.
44. Abatement of tax for shade trees.
45. Sidewalk tax anticipated.
46. Certificate of anticipation.
47. Transfer of certificate.
48. Abatement of tax for watering trough.
49. System of taxation defined.
50. Town may change its system.
51. Vote thereon.
52. When change to take effect.
53. Annual tax thereunder.

§ 30. Meetings of commissioners.—The commissioners of highways of each town shall meet within eighteen days after the annual town meeting, at the town clerk's office, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.

§ 31. Lists of inhabitants.—Each of the overseers of highways shall deliver to the clerk of the town, within sixteen days after his appointment, a list subscribed by him, of the names of all the inhabitants in his highway district, who are liable to work on the highways; and the town clerk shall deliver such lists to the commissioners of highways.

No. 18.—§ 31.

Overseer's List of Persons Liable to Highway Labor.

I, L M, overseer of highway district No., of the town of, do hereby certify that the following is a true and correct list of all the inhabitants and corporations who are liable to work on the highways in said district:

NAMES.	NAMES.
G H.	O P.
J K.	R S.

Dated this....day of....., 18...

L M,

Overseer of Highway District No. ...

No. 19.—§ 32.

Commissioner's List of Non-resident Lands.

The following is a list and statement of the contents of all lots, pieces or parcels of land within the town of....., in the county of....., owned by non-residents therein, made by the undersigned, commissioners of highways of said town:

NAME OF TRACT OR PATENT.	Number lot.	Part.	Number section.	Township.	Number range.	Number acres.	Valua- tion.

Dated this....day of....., 18...

A B,

C D,

E F,

Commissioners of Highways.

§ 32. Non-resident lands.—The commissioners of highways in each town, before making the assessment of highway labor, shall make out a list and

statement, of the contents of all unoccupied lots, pieces or parcels of land within the town, owned by non-residents; every lot so designated, shall be described in the same manner as is required from assessors, and its value shall be set down opposite to the description; such value shall be the same as was affixed to the lot in the last assessment-roll of the town; and if such lot was not separately valued in such roll, then in proportion to the valuation which shall have been affixed to the whole tract, of which such lot shall be a part.

§ 33. Assessments of highway labor, how made.—The commissioners of highways shall, at their first or some subsequent meeting, ascertain, assess and apportion the highway labor to be performed in their town, in the then ensuing year, as follows:

1. The whole number of days work to be assessed in each year, shall be ascertained, and shall be at least three times the number of taxable inhabitants in the town.

2. Every male inhabitant being above the age of twenty-one years (excepting all honorably discharged soldiers and sailors who lost an arm or a leg in the service of the United States, during the late war, or who are unable to perform manual labor by reason of injuries received, or disabilities incurred in such service, persons seventy years of age, clergymen and priests of every denomination, paupers, idiots and lunatics), shall be assessed at least one day.

3. The residue of such days work, shall be apportioned and assessed upon the estate, real and personal, of every inhabitant of the town, including corporations liable to taxation therein, as the same

shall appear by the last assessment-roll of the town, and upon each tract or parcel of land owned by non-residents of the town contained in the list made by the commissioners, excepting such as are occupied by an inhabitant of the town, which shall be assessed to the occupant. The assessment of labor for personal property, must be in the district in which the owner resides, and real property in the district where it is situated, except that the assessment of labor upon the property of corporations, may be in any district or districts of the town, and such labor may be worked out or commuted for, as if the corporation were an inhabitant of the district; but the real property within an incorporated village or city, exempted from the jurisdiction of the commissioners of highways of the town, and personal property of an inhabitant thereof, shall not be assessed for highway labor by the commissioners of highways of the town. Whenever the assessors of any town shall have omitted to assess any inhabitant, corporation or property therein, the commissioners of highways shall assess the same, and apportion the highway labor as above provided.

4. The commissioners shall affix to the name of each person named in the lists furnished by the overseers, and of assessable corporations, and to the description of each tract or parcel of land contained in the list prepared by them of non-resident lands, the number of days which such person or tract shall be assessed for highway labor, as herein directed, and the commissioners shall subscribe such lists, and file them with the town clerk.

5. If the commissioners of highways shall neglect for one year, after any highway shall have been laid out, and title thereto acquired, to open or work the

same, or any part thereof, and any inhabitant or corporation of the town, in or through which the highway runs, shall give ten days notice to the commissioners of the town, that they desire to apply the whole or any part of their highway labor to the working of such highway, the commissioners shall assign such inhabitants and corporations to such highway district, direct the highway labor for which they are annually assessed to be applied to the same, and cause the same to be worked and put in good order for vehicles and travelers within one year, under the direction of any of such inhabitants, whom such commissioners may appoint as an overseer of the labor so to be applied to such highway; and when the number of days labor assessed in the current year to such inhabitants, as the annual highway tax, is not sufficient to put such highway in good order, the inhabitants and corporations may anticipate the whole or any part of the highway labor assessed, and to be assessed against them, for a period not exceeding three years, but from no one of the districts of the town shall more than one-half of its annual labor be taxed and applied to any highway not embraced in such district.

§ 34. Copies of list delivered to overseers.—The commissioners of highways shall direct the clerk of the town to make copies of such lists, and shall subscribe such copies, after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed, and the acceptance of the list by any overseer to whom the same may be delivered, shall be deemed conclusive evidence of his acceptance of the office of overseer.

No. 20.—§ 34.

ROAD WARRANT.

To....., *Overseer of Highways in District No....., of the*
Town of....., which begins at.....

You will cause the several persons and corporations whose names are hereunto annexed, to labor on the highways in your district the number of days set opposite their names, or commute therefor at the rate of one dollar for each day: two-thirds to be performed by the first day of next, and the residue by the first day of next. You are also required to cause all noxious weeds on the highway in your district to be cut down between the fifteenth day of June and the first day of July, and again between the fifteenth day of August and the first day of September; and also to cause the loose stones lying on the beaten track of the road, to be removed at least once in each month from the first day of April to the first day of December. Should any name in your district be omitted, or new inhabitants move in, you are to annex their names, and to assess them in proportion to their real and personal estate. And whenever the labor in your ward or district has been worked out, commuted for, or returned to the supervisor, and the highways are obstructed by snow, or otherwise, and written notice has been given to you by any two or more inhabitants of the town liable to the payment of highway tax, requesting the removal of such obstruction, you are required to immediately call upon all persons liable to highway tax in your district to assist in removing such obstructions, and such labor, so called for by you, shall be assessed upon those liable to perform the same, in proportion to their original assessments. Also, to deliver to the supervisor of said town, on or before the first day of October next, a list of all resident landholders residing in your district, who have not worked out their highway assessment or commuted for the same, and a list of all the lands of non-residents, and of persons unknown, which are taxed on your list, on which the labor assessed by the commissioners, or added by you, according to law, has not been performed or commuted for, and the number of days unpaid for by each, charging for the same at the rate of one dollar and fifty cents per day, which list shall be accompanied by your affidavit, duly certified, that you have given the notice required by sections 60 and 61 of the highway law, and that the labor for which such residents and such land is returned, has not been performed or commuted. You are to make return to one of the commissioners of highways on the second Tuesday next preceding the annual town meeting in your town, within the year for which you are appointed, verified by your oath containing: First. The names of all persons assessed to work on the highways in the district of which you are overseer. Second. The names of all those who have actually worked on the highways with the number of days they have so worked. Third. The names of all those who have been fined,

and the sums in which they have been fined. Fourth. The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by you. Fifth. A list of all persons whose names you have returned to the supervisor as having neglected or refused to work out their highway assessments, with the number of days and amount of tax so returned for each person, and a list of all lands which you have returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned — according to the statute in such case made and provided. And you are to pay over to said *commissioners* according to law, all moneys paid to you for commutation by all moneyed or stock corporations hereby assessed upon it or them for highway labor, and all moneys remaining in your hands, arising from fines and commutations. The law imposes a penalty of ten dollars on the overseers for neglect or refusal to make such return, or to pay over said moneys, which fine the *commissioners* are bound to enforce in every case of default.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

NAMES.	Days assessed.	Days worked.	Days commuted.	Amount of fines.
.....				
.....				
.....				
.....				
.....				

§ 35. Names omitted.—The names of persons or corporations omitted from any such list, and of new inhabitants, shall from time to time be added to the several lists, and they shall be assessed by the overseers in proportion to their real and personal estate to work on the highways as others assessed by the commissioners on such lists, subject to an appeal to the commissioners of highways.

§ 36. Appeals by non-residents.—Whenever any non-resident owner of unoccupied lands shall conceive himself aggrieved by any assessment of any commissioner of highways, such owner, or his agent, may, within thirty days after such assessment, appeal to the county judge of the county in which such land is situated, who shall, within twenty days thereafter, hear and decide such appeal, the owner or agent giving notice to the commissioners of highways of the time of the hearing before the judge, and his decision thereupon shall be final and conclusive.

No. 21.—§ 36.

Appeal by Non-resident.

COUNTY OF..... }
TOWN OF..... } ss.:

L M, a non-resident owner of lands in said town, considering (or T W, agent of L M, a non-resident owner of lands in said town, who considers) himself aggrieved in the assessment for highway labor by the commissioners of highways of said town, upon the following described lands, to wit: (Here describe them as in the list made by the commissioners) does hereby appeal from the assessment of said commissioners to the county judge of said county.

Dated this....day of....., 18...

L M.

No. 22.—§ 36.

Notice by the Owner or His Agent, to the Commissioners, of the Appeal.

To A B, C D, E F, commissioners of highways of the town of, you are hereby notified, that considering myself aggrieved by your assessment for highway labor of the land owned by me in said town, I have this day appealed to the county judge of the county of, who will on the....day of, at....o'clock, in the.....noon, at....., in the village of....., hear and decide on said appeal.

Dated this....day of....., 18...

L M.

§ 37. Credit on private roads.—The commissioners of highways of each town shall credit to such per-

sons as live on private roads and work the same, so much on account of their assessments as the commissioners may deem necessary to work such private road, or shall annex the private roads to some of the highway districts.

§ 38. **Certain assessments to be separate.**—Whenever the commissioners of highways shall assess the occupant, for any land not owned by such occupant, they shall distinguish in their assessment-lists, the amount charged upon such land, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed during the same year to work on the highways, on account of the same land.

§ 39. **Tenant to deduct assessment.**—Whenever any tenant of any land for a less term than twenty-five years, shall be assessed to work on the highways for such land, and shall actually perform such work, or commute therefor, he shall be entitled to a deduction from the rent due, or to become due from him for such land, equal to the full amount of such assessment, estimating the same at the rate of one dollar per day, unless otherwise provided for by agreement between the tenant and his landlord.

§ 40. **Reassessment in case of neglect.**—If it shall appear from the annual return of any overseer of highways, that any person or corporation who was assessed to work on the highways (other than non-residents), has neglected to work the whole number of days assessed, and has not commuted for, or otherwise satisfied such deficiency, the commis-

sioners of highways shall reassess the deficiency to the person so delinquent, at the next assessment for work for highway purposes, and add it to his annual assessment; such reassessment shall not exonerate any overseer of highways from any penalty which he may have incurred under the provisions of this chapter.

§ 41. Omissions of assessors corrected.— Whenever the assessors of any town shall have omitted to assess any inhabitant or property in their town, the commissioners of highways shall assess the persons and property so omitted, and shall apportion highway labor upon such persons or property, in the same manner as if they had been duly assessed upon the last assessment-roll.

§ 42. New assessments by overseers.— When the quantity of labor assessed on the inhabitants of any district by the commissioners of highways, shall be deemed insufficient by the overseer of the district to keep the highways therein in repair, such overseer shall make another assessment on the actual residents of the district, in the same proportion, as near as may be, and not exceeding one-third of the number of days assessed in the same year by the commissioners, on the inhabitants of the district; and the labor so assessed by an overseer, shall be performed or commuted for in like manner, as if the same had been assessed by commissioners of highways.

No. 23.— § 42.

New Assessments by Overseer.

The amount of labor assessed on the inhabitants of highway district No., town of....., being deemed by me, the undersigned overseer of highways in said district, insufficient to keep the highways therein in repair, I do therefore, pursuant

to section 42 of the highway law, make a further assessment as follows:

NAMES.	Days.	NAMES.	Days.
J D. R S.		T W. B R.	

Dated this....day of....., 18...

L M,

Overseer of Highways, District No.

§ 43. Sidewalks and trees.— The commissioners of highways may, by an order in writing duly certified by a majority of them, authorize the owners of property adjoining the highways, at their own expense, to locate and plant trees, and locate and construct sidewalks along the highways in conformity with the topography thereof, which order, with a map or diagram showing the location of the sidewalk and tree planting, certified by the commissioners, shall be filed in the office of the clerk of the town where the highway is located, within ten days after the making of the order.

(R. S. p. 1400, post, p. 917.) *

No. 24.— § 43.

Authority from Commissioners for Sidewalk and Trees.

COUNTY OF }
TOWN OF } ss.:

We, the undersigned commissioners of highways of said town, do hereby authorize L M, at his own expense, to locate and plant trees and locate and construct sidewalks along the highway adjoining his premises, in highway district No. in said town, according to a map or diagram hereto attached and made a part of this order.

Dated this....day of....., 18...

A B,

C D,

E F,

Commissioners of Highways.

*So in the original.

MAP OR DIAGRAM SHOWING LOCATION OF SIDEWALK AND TREE
PLANTING.

(Here make a diagram showing location of sidewalk to be laid and trees to be planted.)

Dated this....day of....., 18...

A B,
O D,
E F,

Commissioners of Highways.

§ 44. Abatement of tax for shade trees.— Any inhabitant liable to highway tax, who shall hereafter, pursuant to such an order, transplant by the side of the highway adjoining his premises, any forest shade trees, fruit trees, or any nut bearing trees, suitable for shade trees, shall be allowed by the overseers of highways, or other officer having charge of the highway, in abatement of his highway tax, one dollar for every four trees set out ; but all trees must have been set out the year previous to such allowance, and be living and well protected from animals at the time of the allowance, and not further than eight feet from the outside line of any highway three rods wide, and not more than one additional foot further therefrom, for each additional rod in width of highway, and not less than seventy feet apart, on the same side of the highway, if elms, or fifty feet, if other trees ; trees transplanted by the side of the highway, in place of trees which have died, shall be allowed for in the same manner. Such abatement of highway tax to any person, shall not exceed one-quarter of his annual highway tax in any one year ; but such abatement shall be allowed by the overseers of highways, or other officers having charge of the highway, annually, until it shall have equalled the whole number of trees set out, at the rate herein specified.

§ 45. **Sidewalk tax anticipated.**—The commissioners of highways of any town, may, upon the written application of a majority of the inhabitants in any highway district, subject to assessment for highway labor therein, authorize not more than one-quarter of the highway labor of the district, or of the commutation money received therefor, to be expended under the direction of the overseer of highways of the district, in the construction, repairs and improvement of any sidewalks within the limits of the district, and may by writing signed by them, filed with the town clerk, authorize not more than one-fourth of the highway labor of the district, to be anticipated for not more than three years, for constructing, improving or repairing any such sidewalk; and thereupon any person or corporation, assessed for highway labor in the district, may, for such purpose, anticipate his or its assessment for highway labor for the term prescribed by the commissioners, and may perform such labor, under the direction of the overseer within such time, or commute therefor.

No. 25.—§ 45.

Application to Expend Highway Tax for Sidewalks.

To the Commissioners of Highways of the Town of....., in the County of.....:

We, the undersigned, a majority of the inhabitants of highway district No. ..., in said town of....., subject to assessment for highway labor therein, hereby make application to you for authority to anticipate and expend (not more than one-quarter) of the highway labor or commutation money of said district to the construction, improvement and repairs of the sidewalks in said district for the term of (not exceeding three) years, pursuant to section 45 of the highway law.

Dated this. day of.....18...

L.M.
R.S.
T W.

No. 26.—§ 45.

Authority to Expend Highway Tax for Sidewalk.

COUNTY OF..... }
 TOWN OF } ss.:

We, the undersigned commissioners of highways of said town, hereby authorize the overseer of highway district No. ..., in said town, to anticipate and expend (not exceeding one-quarter) of the highway labor or commutation money received therefor, in said district, for the term of (not exceeding three) years, in the construction improvement and repair of the sidewalk within the limits of said district, pursuant to sections 45 and 46 of the highway law.

Dated this....day of.....18...

A B,
 C D,
 E F,

Commissioners of Highways.

§ 46. **Certificate of anticipation.**—The overseer shall give to such person or corporation, upon the performance of such labor or commutation therefor, a certificate signed by him, showing the number of days labor so anticipated and worked, or commuted for by such person or corporation; and in each succeeding year, upon presentation of such certificate, the person or corporation shall be credited and allowed by the overseer of highways, with the performance of the number of days labor assessed for such year, until the credit shall equal the number of days stated in the certificate to have been anticipated, and shall indorse thereon a statement signed by him, showing the credit and allowance.

§ 47. **Transfer of certificate.**—Such certificate may be transferred to any grantee, upon a voluntary grant of the real property upon which such highway labor is assessable, and if such real property is transferred otherwise, than by voluntary grant, it shall be deemed to have been transferred to the person succeeding thereto, and in the hands

of any such transferee, it shall have the same effect as when held by the original owner.

No. 27.—§§ 46, 47.

Certificate of Anticipation.

COUNTY OF }
TOWN OF } ss. :

I, the undersigned, overseer of highway district No. in the said town of hereby certify that R S has anticipated and worked (or commuted for) days, constructing, improving and repairing the sidewalk within the limits of said district, pursuant to section 45 of the highway law.

Dated this day of 18 ...

L M,

Overseer of Highway District No. ...

Assignment to be Indorsed on the back of Certificate in case of Transfer.

For value received, I hereby assign and transfer all my right and interest in and to the within certificate of anticipation to J B, grantee of the real property upon which such highway labor is assessable.

Dated this day of 18 ...

R S.

§ 48. Abatement of tax for watering trough.—The commissioners of highways shall annually abate three dollars from the highway tax of any inhabitant of a highway district, who shall construct on his own land therein, and keep in repair a watering trough beside the public highway, well supplied with fresh water, the surface of which shall be two or more feet above the level of the ground, and easily accessible for horses with vehicles; but the number of such watering troughs in the district, and their location, shall be designated by the commissioners.

§ 49. System of taxation defined.—The system of taxation for working and repairing highways, as hereinbefore provided, shall be known as "The

labor system of taxation," and the system herein-after provided for shall be known as "The money system of taxation."

§ 50. Town may change its system.—Any town may change its system of taxation for working and repairing its highways, by complying with the following provisions relating thereto.

§ 51. Vote thereon.—Upon the written request of twenty-five taxpayers of any town, the electors thereof may, at each annual town meeting, vote by ballot upon the question of changing the system of taxation for working the highways; but no person residing in an incorporated village or city, exempted from the jurisdiction of commissioners of highways of the town, shall sign such request, or vote upon such question.

No. 28.—§ 51.

*** Application for a Vote to Change System of Working Highways.**

To O P, Town Clerk of the Town of....., in the County of.....

We, the undersigned, taxpayers of said town of....., hereby request that a vote by ballot be taken at the next annual town meeting in said town by the electors thereof entitled to vote thereon, on the question of changing the system of taxation for working the highways in said town, pursuant to sections 50, 51, 52 and 53 of the highway law.

Dated this.... day of....., 18...

(Taxpayers sign here.)

§ 52. When change to take effect.—When a town shall have voted to change the system of working and repairing the highways, as herein provided, such change shall not take effect until the next annual meeting of the board of supervisors, after the town meeting at which it was decided to make

* The application must be filed in the office of the town clerk at least twenty days before the annual town meeting, pursuant to section 34 of the town law.

the change; and until such annual meeting of the board of supervisors the former system of repairing highways shall remain in force in such town.

§ 53. Annual tax thereunder.—Any town voting in favor of the money system, shall annually raise by tax, to be levied and collected the same as other town taxes, for the repair of the highways, an annual sum of money, which shall be at least equal to one-half the value, at the commutation rates, of the highway labor which should be assessable under the labor system. The amount of such tax shall be determined by the commissioners of highways and the town board, who shall certify the same to the board of of supervisors, the same as any other town charge.

ARTICLE III.

THE DUTIES OF OVERSEERS OF HIGHWAYS, AND THE PERFORMANCE OF HIGHWAY LABOR.

SECTION 60. Notice to work.

61. Notice to non-residents.
62. Commutation.
63. Teams and implements.
64. Substitutes.
65. Penalties for neglect to work or commute.
66. Assessment for unperformed labor.
67. Penalty for refusal of overseer to provide list.
68. Collection of arrearages for unperformed labor.
69. Annual return of overseers.
70. Noxious weeds in highway.
71. Overseers to notify occupant to remove weeds.
72. Abatement of tax for removal of fence.
73. Abatement of tax for street lamps.

§ 60. Notice to work. — Every overseer of highways shall give at least twenty-four hours' notice to all residents of his district, and corporations assessed to work upon the highways therein, of the

time and place at which they are to appear for that purpose, and with what teams and implements, and that they will be allowed at the rate of one day for every eight hours of work on the highways, between seven o'clock in the forenoon and six o'clock in the afternoon. The notice to corporations shall be served personally on an agent thereof residing in the town, if any, or if none, by filing the notice in the office of the town clerk, at least five days before the labor shall be required; and any number of days not exceeding fifty, may be required to be performed by any such corporation in any one day.

No. 29.—§ 60.

Notice to Corporation to be Served on Agent or Filed in Office of Town Clerk.

To T W, a Corporation (or R S, Agent of T W):

Take notice that you (or T W) are assessed..... day's labor in highway district No. in the town of....., county of, and that said labor is required to be performed on the highway (state where) in said district, on the day ofnext, and the days following, and you are required to furnish (state what utensils, if any), and to perform.....day's labor in a day, and will be allowed one day for every eight hours' of work on said highway between 7 o'clock in the A. M. and 6 o'clock in the P. M.

Dated this....day of....., 18...

L M,

Overseer of Highway District No. ...

§ 61. Notice to non-residents.—Every overseer of highways shall give at least five days' notice to every resident agent of every non-resident landholder, whose lands are assessed, of the number of days such non-resident is assessed, and the time and place at which the labor is to be performed. If the overseer can not ascertain that such non-resident has an agent within the town, he shall file a written notice in the office of the town clerk, at least twenty days before the time appointed for

performing such labor, containing the names of such non-residents, when known, and a description of the lands assessed, with the number of days labor assessed on each tract, and the time and place at which the labor is to be performed.

No. 30.—§ 61.

Notice to Agent of Non-resident.

To R S, Agent of T W, a Non-resident Owner of Lands in the Town of....., in the County of.....

Take notice that T W, a non-resident of the said town, is assessed days labor in highway district No. , in said town, and that said labor is required to be performed on the highway (state where) in said district on the....day of..... next, and the days following.

Dated this....day of, 18..

L M,

Overseer of Highway District No....

No. 31.—§ 61.

Notice to Non-residents to be Filed in the Office of Town Clerk.

Notice is hereby given that the highway labor assessed on the following described parcels of land in the town of....., county of....., owned by non-residents, is required to be performed from the... day of..... to the day of..... next, in highway district No...., in said town, on the highway (state where).

OWNER'S NAMES.	Description of lands.	Day's assessed.

Dated this....day of....., 18....

L M,

Overseer of Highway District No....

§ 62. Commutation.—Every person and corporation, shall work the whole number of days for which

he or it shall have been assessed, except such days as shall be commuted for, at the rate of one dollar per day, and such commutation money shall be paid to the overseer of highways of the district in which the labor shall be assessed, within at least twenty-four hours before the time when the person or corporation is required to appear and work on the highway; but any corporation may pay its commutation money to the commissioners of highways of the town, who shall pay the same to the overseers of the districts respectively, in which the labor commuted for was assessed.

§ 63. **Teams and implements.**—Every overseer of highways may require a team, or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, from any person having the same within his district, who shall have been assessed three days or more, and who shall not have commuted for his assessment; and the person furnishing the same upon such requisition, shall be entitled to a credit of three days for each day's service therewith.

§ 64. **Substitutes.**—Every person or corporation assessed to work on the highways, and warned, who does not commute therefor, may appear in person or by an able-bodied man as a substitute. A day's labor shall be eight hours of work, and every person or corporation assessed more than one day shall be allowed to work ten hours in each day.

§ 65. **Penalties for neglect to work or commute.**—Every person or corporation assessed highway labor, who shall not commute, and who shall not appear

*So in the original.

and work when duly notified, shall be liable to a penalty of one dollar and fifty cents for every day he shall so fail to appear and work; and for wholly omitting to comply with any requisition to furnish a team, cart, wagon, implements and man, he shall be liable to a penalty of five dollars for each day's omission, and for omitting to furnish either a cart, wagon, plow, team or man to manage the team, he shall be liable to a penalty of one dollar and fifty cents for each day's omission; and if any person shall after appearing, remain idle, or not work faithfully, or hinder others from working, he shall be liable to a penalty at the rate of one dollar and fifty cents a day, for each hour. The penalties herein imposed, may be recovered by action by the overseer of highways as such, and, when collected, shall be expended or disposed of by the overseer in the same manner as commutation moneys. The penalties, when recovered, shall be applied in satisfaction of the labor assessed, for omission to perform which, the penalties were respectively imposed. The overseer of highways may excuse any omission to perform labor when required, if a satisfactory reason shall be given therefor; but the acceptance of any such excuse shall not exempt the person excused from commuting for, or working the whole number or days for which he shall have been assessed during the year.

§ 66. **Assessment for unperformed labor.**— Every overseer of highways shall, on or before the first day of October in each year, make out and deliver to the supervisor of his town, a list of all persons and corporations who have not worked out, or commuted for their highway assessment, with the number of

days not worked or commuted for by each, charging for each day in such a list, at the rate of one dollar and fifty cents per day; and also a list of all the lands of non-residents and persons unknown, which were assessed on his warrant by the commissioners of highways, or added by him, on which the labor assessed has not been performed or commuted for, and the number of days labor unpaid by each, charging for the same at the rate of one dollar and fifty cents per day, which list shall be accompanied by the affidavit of the overseer, that he has given the notice required, to appear and work, and that the labor specified in the list returned, has not been performed or commuted, and the supervisor shall present such lists to the board of supervisors of his county.

No. 32.—§ 66.

Overseer's Return to Supervisor.

To the Supervisor of the Town of....., in the County of.....:

The following is a list of all the resident landholders residing in highway district No., in the said town of....., who have not worked out their highway assessments, or commuted for the same, with the number of days not worked or commuted for by each, at one dollar and fifty cents per day; and also a list of all the lands of non-residents and of persons unknown, which are assessed on my warrant by the commissioners of highways, or added by me according to law, on which the labor assessed has not been performed or commuted for, and the number of day's labor unpaid by each, charging for each at the rate of one dollar and fifty cents per day:

OWNERS' NAME.	Description of land.	Assessed value.	Number of days.	Amount.

List of Non-resident Lands.

OWNERS' NAME.	Description of land.	Assessed value.	Number of days.	Amount.

L M,

Overseer of Highway District No. ...

COUNTY OF..... }
 TOWN OF..... } ss.:

L M, being duly sworn, says he is the overseer of highway district No., in the town of....., in the county of....., and that he has given the notices to appear and work, required by sections 60 and 61 of the highway law, and that the labor for which such residents and such land is returned, has not been performed or commuted for.

L M,

Overseer of Highway District No. ...

Subscribed and sworn to before }
 me this....day of.....18.. }

G H,

Justice of the Peace.

§ 67. Penalty for refusal of overseer to provide list.—

If any overseer shall refuse or neglect to deliver such list to the supervisor or to make the affidavits as herein directed, he shall for every such offense, forfeit the sum of ten dollars, and the amount of taxes for labor remaining unpaid, at the rate of one dollar for each day assessed, to be recovered by the commissioners of highways, and applied in making and improving the highways and bridges of the delinquent overseer's district.

§ 68. Collection of arrearages for unperformed labor.— Each board of supervisors, at its annual meeting in each year, shall cause the amount of such arrear-

ages for highway labor returned to them, estimating each day's labor at one dollar and fifty cents a day, to be levied and collected from the real or personal estate of the person, corporation, or from the non-resident real estate, specified in such list, to be collected by the collectors of the several towns, in the same manner that other town taxes are collected, and shall order the same, when collected, to be paid over to the commissioners of highways of the town wherein the same is collected, to be by them applied toward the construction, repairs and improvement of the highways and bridges in the district in which the labor was originally assessed.

§ 69. Annual return of overseers.— Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town-meeting in his town, within the year for which he is elected or appointed, render to one of the commissioners of highways of the town, an account in writing, verified by his oath, and containing,

1. The names of all persons assessed to work on the highways in the district of which he is overseer.

2. The names of all those who have actually worked on the highways, with the number of days they have so worked.

3. The names of all those from whom penalties have been collected, and the amounts thereof.

4. The names of all those who have commuted, and the manner in which the moneys arising from penalties and commutations have been expended by him.

5. A list of all persons whose names he has returned to the supervisor as having neglected or refused to work out their highway assessments, with the number of days and the amount of tax so

returned for each person, and a list of all the lands which he has returned to the supervisor for non-payment of taxes, and amount of tax on each tract of land so returned; and he shall then and there pay to the commissioners of highways, all money remaining in his hands unexpended, to be applied by them in making and improving the highways and bridges of the town, in such manner as they shall direct; and if he shall neglect or refuse to render such account, or if, having rendered the same, he shall refuse or neglect to pay any balance which then may be due from him, he shall for every such offense, forfeit the sum of ten dollars.

No. 32.—§ 69.

'Annual Return of Overseer.

To the Commissioners of Highways of the Town of.....in the County of.....:

The undersigned, overseer of highway district No, in said town, hereby renders the following account pursuant to section 69, of the highway law:

1. The names of all persons assessed to work on the highways in said district are as follows:

NAMES.	Days assessed.

2. The names of all those who have actually worked on the highways, with the number of days they have worked are as follows:

NAMES.	Days work.

3. The names of all those who have been fined, and the sums in which they have been fined are as follows:

NAMES.	Amount.

4. The names of those who have commuted, and the amount of the commutation, are as follows:

NAMES.	Amount.

5. The moneys arising from penalties and commutations have been expended as follows: (State how.)

6. Names returned to the supervisor of persons who have neglected or refused to work out their highway assessments, with the number of days and amount of tax so returned are as follows:

NAMES.	Days assessed.	Amount of tax.

7. The following is a list of lands returned to the supervisor for non-payment of taxes:

NAMES OF OWNERS.	Description.	Assessed value.	Number days.	Amount.

L M,
Overseer of Highway District No.

COUNTY OF }
 TOWN OF } ss.:

L M., being duly sworn, says he is overseer of highway district No. in the town of, and that the foregoing account subscribed by him, is true to the best of his knowledge and belief.

L M,

Overseer of Highway District No.

Subscribed and sworn to before }
 me this day of 18... }

G H,

Justice of the Peace.

§ 70. Noxious weeds in highway.— Every person or corporation, owning or occupying, under a lease for one or more years, any cultivated or inclosed lands, abutting upon any highway, shall cause all noxious weeds, briars, and brush growing upon such lands within the bounds of the highway, to be cut or destroyed between the fifteenth day of June and the first day of July, and between the fifteenth day of August and the first day of September, in each and every year; but boards of supervisors may fix a different period or periods, for such cutting or destruction in their respective counties. No person shall place or cause to be placed, any noxious weeds, or the seeds of such weeds, within the bounds of any public highway. Any willful violation of this section, shall subject the person or corporation so offending, to a penalty of ten dollars for each offense.

§ 71. Overseers to notify occupants to remove weeds.— The overseers of every highway district shall give written notice to any occupant of the premises to cut all weeds, briars and brush growing within the bounds of the highway; if such occupant shall not cut such weeds, briars and brush as so required within ten days after receiving such notice, such overseer shall employ some one to do such

work, and and* make a report under oath to the commissioners of highways, of the amount expended by him thereon, and the ownership and occupancy of the several parcels of land against which the labor was performed, on or before the first day of November in each year; the commissioners of highways shall certify these statements to the supervisor of the town, and the supervisor shall lay the same before the board of supervisors at its next annual meeting, and such board shall include the amounts included in such statements in the taxes assessed upon the lands, upon or against which the labor was performed, the same to be collected with the other taxes, and paid over upon the order of the supervisor to the parties entitled thereto.

No. 34.—§ 71.**Notice to Occupant to Cut Weeds, Brush and Briers.**

To R S, Occupant of (briefly describe the premises) Abutting on the Highway in Highway District No. . . . , in the Town of , County of N. Y. :

The undersigned, overseer of highways of said district, hereby notifies and requires you to cut all weeds, briers and brush growing upon the above described lands within the bounds of said highway within ten days after the receipt of this notice; and if you fail to do so, I shall cause the same to be cut and make a report thereof pursuant to section 71 of the highway law.

Dated this . . . day of , 18 . . .

L M,

Overseer of Highway District No.

No. 35.—§ 71.**Overseer's Report to Commissioners of Amount Expended Cutting Weeds.**

To the Commissioners of Highways of the Town of , in the County of :

The undersigned, overseer of highway district No. . . . , in said town, in accordance with section 71 of the highway law, hereby renders the following report:

The amount of money expended by me for cutting weeds, briers and brush within the bounds of the highway in said

*So in the original.

district, and the names of the owners and occupants of the several pieces or parcels of land against which said labor was performed, with a brief description of the same, are as follows :

NAME OF OWNER.	Name of occupant.	Description of premises.	Amount expended.

And in each case default was made by the occupant, after due notice had been given.

Dated this....day of.....18...

L M,

Overseer of Highway District No...

COUNTY OF..... } ss.:

TOWN OF..... }

L M, being duly sworn, says the foregoing report subscribed by him is true.

L M.

Subscribed and sworn to before me, }

this....day of....., 18... }

G H,

Justice of the Peace.

No. 36.—§ 71.

Commissioners Certificate to the Supervisor.

To B B, Supervisor of the Town of.....in the County of.....:

The undersigned, commissioners of highways of said town, hereby certify that the annexed reports have been made by the overseers of highways whose names are thereto subscribed, pursuant to section 71 of the highway law; and that the several amounts therein expended (if they have been paid by the commissioners or out of funds in the hands of the overseers from commutations or fines so state, as the case may be).

Dated this....day of.....18...

A B,

C D,

E F,

Commissioners of Highways.

§ 72. Abatement of tax for removal of fence.— Any inhabitant liable to a highway tax, who shall remove

from lands owned or occupied by him, the fence along any public highway, for the purpose of preventing the drifting of snow into such highway, shall be allowed by the overseer of highways, in abatement of his highway tax, the time actually expended in removing such fence, and in replacing the same, pursuant to the directions of the overseer of highways.

§ 73. **Abatement of tax for street lamps.**— Any person or corporation owning or holding real estate, or other property liable to highway tax, except in the county of Kings, other than in cities and incorporated villages, who shall, with the consent of the overseer of highways in charge of the district in which such property is assessed, and in such places as he may direct, erect a street lamp, and cause the same to be properly attended to and kept burning during such hours of each night as the overseer of highways may direct, shall be allowed by the overseer of highways, in abatement of such highway tax, six dollars annually, or such portion of six dollars as the annual highway taxes upon such real estate or other property may be.

ARTICLE IV.

LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS, AND LAYING OUT PRIVATE ROADS.

SECTION 80. Highways by dedication.

81. Survey.

82. Application.

83. Application for commissioners.

84. Appointment of commissioners, and their duties.

85. Notice of meeting.

86. Decision of commissioners in favor of application.

87. Damages in certain cases, how estimated.

88. Decision of commissioners denying application.

- SECTION 89. Motion to confirm, vacate or modify.
90. Limitation upon laying out highways.
91. Laying out highways through burying grounds.
92. Costs, by whom paid.
93. Damages assessed, and costs to be audited.
94. When officers of different towns disagree about highway.
95. Difference about improvements.
96. Highways in two or more towns.
97. Laying out highway upon town line.
98. Final determination, how carried out.
99. Highways abandoned.
100. Highways by use.
101. Fences to be removed.
102. Penalty for falling trees.
103. Fallen trees to be removed.
104. Penalty for obstruction or encroachment.
105. How removed, and liability for not removing.
106. Private road.
107. Jury to determine necessity and assess damages.
108. Copy application and notice delivered to applicant.
109. Copy and notice to be served.
110. List of jurors.
111. Names struck off.
112. Place of meeting.
113. Jury to determine and assess damages.
114. Their verdict.
115. Value of highway discontinued.
116. Papers to be recorded in town clerk's office.
117. Damages to be paid before opening the road.
118. Fees of officers.
119. Motion to confirm, vacate or modify.
120. Costs of new hearing.
121. For what purpose private road to be used.
122. Highways or roads along division lines.
123. Adjournments.

§ 80. Highways by dedication.— Whenever land is dedicated to a town for highway purposes therein, the commissioners of highways of such town may, either with or without a written application therefor, and without expense to the town, make an order

laying out such highway, upon filing and recording in the town clerk's office, with such order, a release of the land from the owner thereof. Such commissioners of highways may also, upon written application, and with the written consent of the town board, make an order laying out or altering a highway in their town, upon filing and recording in the town clerk's office, with such application, consent and order a release of all damages from the owners of lands taken or affected thereby, when the consideration for such release, as agreed upon between such commissioners and owners, shall not, in any one case, from any one claimant, exceed one hundred dollars, and from all claimants, five hundred dollars. An order of the commissioners, as herein provided, shall be final.

No. 37.—§ 80.

Order Laying Out Highway on Release from Owners.

At a meeting of the commissioners of highways of the town of....., in the county of....., on the....day....., 18.., for the purpose of deliberating on the propriety of laying out a highway in said town, hereinafter described, and on the application of L M, a person liable to be assessed for highway labor in said town, and a release from the owners of the land through which the highways is proposed to be opened, having been given, it is ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: Beginning (here insert the survey bill), and the line of survey shall be the center of the highway, which shall be.....rods in width.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 38.—§ 80.

Dedication of Land, and Release of Damages.

I, R S, of the town of....., county of....., N. Y., for value received, hereby dedicate to the town of....., aforesaid, a strip of land across my premises in said town, for the

purposes of a highway, described as follows: (Here describe premises dedicated.) And I also hereby release said town from all damages by reason of the laying out and opening of said highway.

In witness whereof, I have hereunto set my hand and seal,
[SEAL.] this....day of....., 18...

R S.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

On this....day of....., 18..., before me, the subscriber, personally appeared R S, to me known to be the person described in, and who executed the foregoing agreement.

G H,

Justice of the Peace.

No. 39.—§ 80.

Consent of Town Board to Lay Out or Alter a Highway.

The undersigned, the town board of the town of....., in the county of....., hereby consent that the commissioners of highways of said town make an order laying out (or altering) the proposed highway described in the application of L M, pursuant to section 80 of the highway law.

Dated this....day of....., 18...

J B,

Supervisor.

O B,

Town Clerk.

G H,

M A,

T W,

C A,

Justices of the Peace.

No. 40.—§ 80.

Order Laying Out or Altering a Highway With the Consent of Town Board.

At a meeting of the commissioners of highways of the town of....., in the county of....., on the....day of....., 18..., for the purpose of deliberating on the propriety of laying out (or altering) a highway in said town hereinafter described, on the written application of L M, a person liable to be assessed for highway labor in said town, and the written consent of the town board of said town, and a release from the owners of the land through which the proposed highway is to be opened, the consideration of any one claimant not exceeding \$100, and to all the claimants not exceeding \$500, it is ordered and determined that a highway shall be, and the same is hereby laid out in said town as follows: (Here insert survey bill.) And the line of

survey shall be the center of the highway, which shall be rods in width.

Dated this.....day of, 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 41.— § 80.

Release of Damages by Owners of the Land.

I, R S, of the town of....., county of....., N. Y., for and in consideration of the sum of..... (not exceeding \$100), hereby consent that a highway be laid out and opened (or altered) across my premises in the town of....., county of....., N. Y., pursuant to the application of L M, dated the....day of....., 18.., and release said town from all damages by reason of laying out and opening (or altering) such highway through my premises.

Dated this....day of....., 18...

R S.

§ 81. Survey.—Whenever the commissioners of highways shall lay out any highway, either upon application to them or otherwise, they shall cause a survey thereof to be made, and shall incorporate the survey in an order to be signed by them, and to be filed and recorded in the office of the town clerk, who shall note the time of recording the same.

§ 82. Application.—Any person or corporation assessable for highway labor, may make written application to the commissioners of highways of the town in which he or it shall reside, or is assessable, to alter or discontinue a highway, or to lay out a new highway.

No. 42.— §§ 80, 82.

Application to Lay Out a Highway.

To the Commissioners of Highways of the Town of....., in the County of..... :

The undersigned, an inhabitant of said town of....., liable to be assessed for highway labor therein, hereby applies to you to lay out a highway in said town, commencing (describe the proposed highway), which proposed highway will pass through the lands of R S and T W (who consent to the laying out of the highway, or as the case may be).

Dated this....day of....., 18...

L M.

No. 43.— §§ 80, 82.**Application to Alter a Highway.**

To the Commissioners of Highways of the Town of, in the County of.....

The undersigned, an inhabitant of said town of....., liable to be assessed for highway labor therein, hereby applies to you to alter the highway leading from.....to....., in said town as follows:

(Insert particular description of the proposed alteration by courses and distances.) The proposed alteration passes through the lands of R S and T W (who consent to the proposed alteration, or as the case may be).

Dated this....day of....., 18...

L M.

No. 44.— §§ 80, 82.**Applications to Discontinue a Highway.**

To the Commissioners of Highways of the Town of, in the County of.....

The undersigned, an inhabitant of said town of....., liable to be assessed for highway labor therein, hereby applies to you to discontinue the old highway beginning (insert description), on the ground that said highway has been abandoned.

Dated this....day of....., 18...

L M.

§ 83. Application for commissioners.— Whenever the land is not dedicated to the town for highway purposes, and not released as herein provided, the applicant shall, within thirty days after presenting the application to the commissioners of highways by verified petition showing the applicant's right to so present the same, and that such application has been in good faith presented, apply to the county court of the county where such highway shall be, for the appointment of three commissioners to determine upon the necessity of such highway proposed to be laid out or altered, or to the uselessness of the highway proposed to be discontinued, and to assess the damages by reason of the laying out, opening, altering or discontinuing of such highway.

No. 45.—§ 83.

Application for Commissioners.

COUNTY COURT.—..... COUNTY.

IN THE MATTER OF THE APPLICATION OF L M TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF..... AND THE ASSESSMENT OF DAMAGES THEREFOR.

To the County Court of County:

The petition of L M, of the town of, in said county, respectfully shows that your petitioner is a person liable to be assessed for highway labor in the town of, said county; that on the day of, 18.., he presented an application in writing to the commissioners of highways of said town as follows: (Insert copy of the application to the commissioners.) That said application was in good faith made; that the commissioners of highways have not laid out (altered or discontinued) said highway pursuant to section 80 of the highway law.

Wherefore, your petitioner prays that three commissioners be appointed pursuant to section 84 of the highway law, to determine upon the necessity of the proposed highway (or altering or discontinuing the said highway), and to assess the damages by reason of laying out and opening (or altering or discontinuing) such highway.

Dated this....day of....., 18...

L M.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

L M, being duly sworn, says he has read the foregoing petition by him subscribed, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

L M.

Subscribed and sworn to before me, }
this....day of....., 18... }

G H,

Justice of the Peace.

§ 84. Appointment of commissioners and their duties.—Upon the presentation of such petition, the county court shall appoint three disinterested freeholders, who shall not be named by any person interested in the proceedings, who shall be residents of the county, but not of the town wherein the highway is located, as commissioners to determine the questions mentioned in the last section. They shall take the constitutional oath of office, and appoint a time and place at which they shall

all meet to hear the commissioners of highways of the town where such highway is situated, and others interested therein. They shall personally examine the highway described in the application, hear any reasons that may be offered for or against the laying out, altering or discontinuing of the highway, and assess all damages by reason thereof. They may adjourn the proceedings before them from time to time, issue subpoenas and administer oaths in such proceedings, and they shall keep minutes of their proceedings, and shall reduce to writing all oral evidence given before them upon the subject of the assessment of damages. They shall make duplicate certificate of their decision, and shall file one in the town clerk's office of the town, and the other, with such minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

No. 46.—§ 84.

Order Appointing Commissioners.

At a..... term of the County Court of the county of.....
held at.....in the.....in and for said county.

Present, Hon. E E, county judge.

(Entitled as in form No. 45.)

On reading and filing the petition of L M, of the town of.....
in said county, dated the....day of....., 18..., praying for
three commissioners to be appointed, pursuant to section 84, of
the highway law, to certify as to the necessity of laying out and
opening (altering or discontinuing) a highway beginning (insert
the description) and to assess the damages by reason of laying
out (altering or discontinuing) such highway, it is hereby ordered
that S S, G G and J J of the town of....., said county, be,
and they are hereby appointed such commissioners.

No. 47.

Notice to Commissioners of their Appointment.

To S S, G G and J J:

Take notice, that you and each of you, have been duly appointed commissioners, by an order of the county court, a copy of which is hereto annexed, and you are hereby required to fix a time and place at which you will all meet to hear the commissioners of

highway and all other persons interested in the highway mentioned in the said order.

Dated this ...day of....., 18...

L M.

§ 85. Notice of meeting.—The applicant shall cause, at least eight days previous, written or printed notice to be posted up in not less than three public places in the town specifying, as near as may be, the highway proposed to be laid out, altered or discontinued, the tracts or parcels of land through which it runs, and the time and place of the meeting of the commissioners appointed by the county court to examine the highway as mentioned in the last section. Such notice shall also, in like time, be personally served on the owner and occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service can not be made, a copy of such notice shall be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry.

No. 48.—§ 85.

Notice of Meeting of Commissioners.

Notice is hereby given that the undersigned has made application to the commissioners of highways of the town of....., in the county of, for the laying out (altering or discontinuing) of a highway in said town, commencing (here insert description as in application) which proposed highway (or alteration) will pass through the lands of (describe who), and by an order of the county court dated the....day of....., 18..., S S, G G and J J were appointed commissioners to certify as to the necessity of said proposed highway (alteration or discontinuance), and to assess the damages by reason of the laying out and opening (alteration or discontinuance) of such highway; and that said commissioners will all meet at, in said town, on the....day of....., 18..., at....o'clock in thenoon, to examine the proposed highway (or the highway) and hear the commissioners of highways and all others interested therein, and to assess the damages if such highway be determined to be necessary (or is altered or discontinued).

Dated this....day of....., 18...

L M.

No. 49.—§ 85.

Affidavit of Posting and Service of Notice.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

L M, being duly sworn, says that he caused notices in writing, of which the within is a copy, to be posted up at, at and, three public places in the town of, said county, on the day of, 18..., and that he served a like notice on (name all the owners and occupants of the lands through which the highway is proposed to be laid out, altered or discontinued) on the day of, 18..., by (state how served), and that said notices were posted at the respective places, and served on the respective persons herein named, at least eight days before the time specified therein for the meeting of said commissioners.

L M.

Subscribed and sworn to before me, }
this....day of, 18... }

G H,

Justice of the Peace.

§ 86. **Decision of commissioners in favor of application.**—If a majority of the commissioners appointed by the county court shall determine that the highway or alteration applied for is necessary, or that the highway proposed to be discontinued is useless, they shall assess all damages which may be required to be assessed by reason thereof and make duplicate certificates to that effect.

No. 50.—§ 86.

Certificate of Commissioners in favor of Applicant.

The undersigned, by an order of the county court of..... county, dated the....day of.....18..., on the application of L M, having been appointed commissioners to certify as to the necessity of laying out and opening (altering or discontinuing) a highway in the town of..... in said county, beginning (describe highway as in the application) which proposed highway (or highway) crosses the lands of (name the persons) and to assess the damages to be caused thereby; now, therefore, we, the said commissioners, having given due notice of the time and place at which we would meet, and all having met at..... in said town on the....day of.....18..., pursuant to such notice, and having taken the constitutional oath of office, and on proof of the service and posting of the notices by the applicant, pursuant to section 85 of the highway law, having viewed the

proposed highway (or alteration or highway proposed to be discontinued) and the lands through which it is proposed to be laid out and opened (altered or discontinued) and having heard all the allegations of the commissioners of highways and the parties interested therein, and the evidence of all the witnesses produced, do thereupon certify, that in our opinion* it is necessary and proper that the highway be laid out and opened (altered or discontinued) pursuant to the said application of L M, dated the....day of.....18..; and we have assessed the damages required to be assessed by reason of laying out and opening (altering or discontinuing) such highway as follows:

The damages of N N at \$.. ..; the damages of W W at \$.....

Dated this....day of..... 18...

S S,
G G,
J J,

Commissioners.

§ 37. Damages in certain cases, how estimated.—The owner of the lands within the bounds of a highway discontinued may inclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damage caused by the laying out of a highway through his other lands in place of the discontinued highway.

§ 38. Decision of commissioners denying application.—If a majority of the commissioners appointed by county court shall determine that the proposed highway or alteration is not necessary, or that the highway proposed to be discontinued is not useless, they shall make duplicate certificates to that effect.

No. 51.—§ 38.

Certificate of Commissioners Denying Application.

(Use form No. 50 to the * and add the following:)

Such highway, or alteration or discontinuance, is unnecessary and improper, and should not be laid out (or should not be made, or such highway should not be discontinued).

Dated this... day of....., 18...

S S,
G G,
J J,

Commissioners.

§ 89. **Motion to confirm, vacate or modify.**—Within thirty days after the decision of the commissioners shall have been filed in the town clerk's office any party interested in the proceeding may apply to the court appointing the commissioners for an order confirming, vacating or modifying their decision, and such court may confirm, vacate or modify such decision. If the decision be vacated the court may order another hearing of the matter before the same or other commissioners. If no such motion is made, the decision of the commissioners shall be deemed final. Such motion shall be brought on, upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein; and the decision of the county court shall be final, excepting that a new hearing may be ordered as herein provided. If the final decision shall be adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years.

No. 52.— § 89.

Notice of Motion to Confirm.

COUNTY COURT.—.....COUNTY.

IN THE MATTER OF THE APPLICATION OF L M TO LAY OUT (ALTER OR DISCONTINUE) A HIGHWAY IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES THEREFOR.

To N M and W W:

Take notice that an application will be made to this court at a term thereof, to be held at the in the of, on the day of, 18.., for an order* confirming the decision of the commissioners in the above entitled matter, which decision is dated the day of, 18.., and for such other and further relief as to the court may seem proper, that said application will be made upon said decision and upon the affidavits and papers, with copies of which you are herewith served.

Dated this....day of....., 18...

L M.

No. 53.—§ 89.**Order Confirming Decision of Commissioners.**

At a term of the.....County Court, held at the.....
in the.....of....., on the....day of....., 18..

Present—Hon. E E, county judge.

(Entitle as in form 52.)

On reading and filing the decision of the commissioners, S S, G G and J J, in the above entitled matter, dated the....day of....., 18.., by which it appears (state substance of decision), with proof of due service upon N N and W W of notice of this application and (state other papers), and on motion of A D, counsel for L M, after hearing B B, counsel for N N and W W, opposed, and on reading (name the papers), it is hereby ordered that the said decision be and the same is hereby* confirmed.

E E,
County Judge.

No. 54.—§ 89.**Notice of Motion to Vacate or Modify Decision.**

(Use form No. 52 to the * and add the following:)

Vacating (modifying or correcting, in the following particulars) stating them) the decision of the commissioners in the above entitled matter, which decision is dated the....day of....., 18.., with costs of this motion, and such further relief as the court may deem proper. That such application will be made upon said decision and the affidavits and papers, copies of which you are herewith served.

Dated this....day of....., 18..

L M.

No. 55.—§ 89.**Order Vacating or Modifying Decision.**

(Use form No. 53 to the * and add as follows:)

Vacated (or modified or corrected as follows: State how. Or that a new hearing be had before the same or other commissioners to be named herein), with \$......costs of this motion to..... against.....

E E,
County Judge.

No. 56.—§ 89.**Laying out Highway on the⁴Certificate of Commissioners.**

WHEREAS, L M did present to us as commissioners of highways of the town of....., in the county of....., a written application dated the....day of....., 18..., to lay out a highway in said town; and, whereas, commissioners were appointed by the county court of said county, pursuant to section

84 of the highway law, and after having duly met, certified that such proposed highway was necessary and proper and should be laid out and opened, and assessed the damages therefor; and the said court having confirmed the decision of said commissioners (or no motion having been made to the county court to confirm, vacate or modify such decision) which said application, orders and certificate (or other papers) were duly filed in the office of the town clerk of said town, to which reference is here made.

Now, therefore, we, the undersigned commissions of highways of said town, pursuant to section 89 of the highway law, do hereby lay out such highway as so applied for and ordered, whereof a survey has been made as follows: Beginning (here insert survey bill) and the line of such survey shall be the center of the highway, which is to be.....rods in width.

Dated this....day of....., 18 ...

A B,
C D,
E F,

Commissioners of Highways.

§ 90. Limitations upon laying out highways.— No highway shall be laid out less than three rods in width, nor through an orchard of the growth of four years or more, or any garden cultivated as such for four years or more, or grape vineyard of one or more years growth, and used in good faith for vineyard purposes, or buildings, or any fixtures or erections for the purposes of trade or manufactures, or any yard or inclosure necessary to the use and enjoyment thereof, without the consent of the owner or owners thereof, unless so ordered by the county court of the county in which the proposed highway is situated; such order shall be made on the certificate of the commissioners of highways of the town or towns in which the proposed highway is situated, showing that the public interest will be greatly promoted by the laying out and opening of such highway, and that commissioners appointed by the court have certified that it is necessary; a copy of the certificate, with eight days notice of the time and place of the hearing before the county court, shall be

served on the owners of the land, or if they are not residents of the county, upon the occupants; the county court upon such certificates, and the proofs and other proceedings therein, may order the highway to be laid out and opened, if it deems it necessary and proper. The commissioners of highways shall then present the order of the county court, with the certificate and proofs upon which it was granted, certified by such court to the general term of the supreme court in the judicial department in which the land is situated, upon the usual notice of motion, served upon the owner or occupant, or the attorney who appeared for them in the county court. If such general term of the supreme court shall confirm the order of the county court, the commissioners of highways shall then lay out and open such highways as in other cases. The provisions of this section shall not apply to vineyards planted, or to buildings, fixtures, erections, yards or inclosures, made or placed on such land after an application for the laying out and opening the highway shall have been made.

No. 57.—§ 90.

Owners Consent for a Highway to be Laid Out through an Orchard.

Whereas, L M has made application in writing to the commissioners of highways of the town of....., in the county of....., dated the....day of....., 18..., to lay out a highway in said town beginning at (insert description), and which said highway will pass through my orchard.

Now, therefore, I do hereby consent that such highway be so laid out, opened, worked and used through my said orchard; but this consent shall not be construed as a waiver or release of my claim for damages, by reason thereof.

Dated this....day of....., 18...

T W.

No. 58.—§ 90.

Certificate to the County Court to Lay Out a Highway through an Orchard.

COUNTY COURT.—.....COUNTY.

IN THE MATTER OF THE APPLICATION OF L M TO LAY OUT A HIGHWAY IN THE TOWN OF....., AND THE ASSESSMENT OF DAMAGES THEREFOR.

To the County Court of.....County:

The undersigned, commissioners of highways of the town of, in said county, hereby certify that on the....day of....., 18... L M, who is liable to be assessed for highway labor in said town, made a written application to us as such commissioners to lay out a highway in said town, passing through an orchard of T W, of the growth of four years or more, pursuant to section 90 of the highway law, as follows: (insert a copy of the application). And that the said T W does not consent thereto; that the following proceedings were had upon such application: (Insert a history of the proceedings up to and including the decision of the commissioners appointed by the courts.) we further certify that the public interest will be greatly promoted by the laying out and opening of such highway through said orchard; and commissioners appointed by this court have certified that such highway is necessary and proper, and have assessed the damages of T W by reason thereof, at \$.....

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 59.—§ 90.

Order of County Clerk to Lay Out Highway.

At a term of the..... county court, held at....., in the..... of, on the day of....., 18...

Present—Hon. E E, county judge.

(Entitled as in form No. 58.)

Upon reading and filing the certificate of A B, C D, and E F, commissioners of highways of the town of....., in the county of....., dated the....day of....., 18..., stating (here state the substance of the facts in the certificate) with proof of due service of notice of this motion, and upon reading the (state what papers) and after hearing A D, of counsel for the applicant, and B B of counsel for T W, opposed, it is hereby ordered that said highway be laid out and opened pursuant to section 90 of the highway law, with ten dollars costs of this motion.

E E,

County Judge.

No. 60.—§ 90.

Order of the General Term.

At a General Term of the Supreme Court, in the.....
 department, held at the court-house in the city of.....
 on the day of, 18...

Present—Hon. A R, P. J.; Hon. B D, Hon. C E, Justices of the
 Supreme Court.

(Entitled as in form No. 58.)

A B, C D, and E F, as commissioners of highways of the town
 of, in the county of, having presented to
 us the order of the county court of county, dated the
day of, 18., that a highway be laid out in said
 town, passing through the orchard of T W, of the growth of four
 years or more, pursuant to section 90 of the highway law, he
 said, T W not consenting thereto, with the certificate and
 proofs upon which the said order was granted, duly certified by
 such court, with proof of due service of notice of this motion, on
 the said T W, and after hearing B B, of counsel for the applicant,
 on the motion, and X B, of counsel for T W, opposed, it is hereby
 ordered that the said order of such county court be, and the same
 is hereby confirmed, with \$.... costs of this motion.

No. 61.—§ 90.

Laying Out of Highway.

Whereas, L M did, on the day of, 18..., present
 to us as commissioners of highways of the town of, in
 the county of, a written application to lay out a high-
 way in said town, passing through an orchard of T W, of the
 growth of four years or more, and such proceedings having been
 had thereon, pursuant to section 90 of the highway law, that the
 county court of said county has ordered said highway to be laid
 out and opened, which said order has been duly confirmed by
 a general term of the Supreme Court in the department,
 which said application certificates and orders and other
 papers in said proceedings are duly filed in the office of the
 town clerk of said town, to which reference is here made.

Now, therefore, we, the undersigned commissioners of high-
 ways, pursuant to section 90 of the highway law, do hereby lay
 out said highway as so applied for and ordered, whereof a survey
 has been made as follows: Beginning (insert survey bill) and
 the line of survey is to be the center of the highway, which is to
 be rods in width.

Dated this....day of....., 18...

A B,
 C D,
 E F,

Commissioners of Highways.

No. 62.— §§ 84, 90, 94.

Subpoena by Commissioners.*The People of the State of New York to L L and O O :*

You and each of you are hereby commanded to be and appear before us, commissioners appointed by the county court of county, at the, in the town of on the ... day of; 18..., at ... o'clock in the noon, to testify and give evidence in the matter of laying out a highway and assessing the damages therefor, in the town of, then and there to be heard and determined.

Dated this ... day of, 18...

A A,
B B,
D D,

Commissioners.

No. 63.— §§ 84, 90, 94.

Oath to be Administered by Commissioners to Witnesses.

You do solemnly swear that the evidence you shall give touching the necessity of laying out the highway in question, and assessing the damages therefor (or as the case may be), shall be the truth, the whole truth and nothing but the truth, so help you God.

§ 91. Laying out highways through burying-grounds.— No private road or highway shall be laid out or constructed upon or through any burying-ground, unless the remains therein contained are first carefully removed, and properly reinterred in some other burying-ground, at the expense of the persons desiring such road or highway, and pursuant to an order of the county court of the county in which the same is situated, obtained upon notice to such persons as the court may direct.

§ 92. Costs, by whom paid.— In all cases of assessments of damages by commissioners appointed by the court, the costs thereof shall be paid by the town except when reassessment of damages shall be had on the application of the party for whom the damages were assessed, and such damages shall not be increased on such reassessment, the costs shall

be paid by the party applying for the reassessment; and when application shall be made by two or more persons for the reassessment of damages, all persons who may be liable for costs under this section, shall be liable in proportion to the amount of damages respectively assessed to them by the first assessment, and may be recovered by action in favor of any person entitled to the same. Each commissioner appointed by the court, for each day necessarily employed as such, shall be entitled to six dollars and his necessary expenses.

§ 93. **Damages assessed, and costs to be audited.**— All damages to be agreed upon, or which may be finally assessed, and costs against the town, as herein provided, shall be laid before the board of supervisors, by the supervisor of the town, to be audited with the charges of the commissioners, justices, surveyors, or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be levied and collected in the town in which the highway is situated, and the money so collected shall be paid to the commissioners of highways of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid.

§ 94. **When officers of different towns disagree about highway.**— When the commissioners of highways of any town, or officers of any village or city having the powers of commissioners of highways, shall differ with the commissioner of highways of any other town, or with the officers of such a village or city having the powers of commissioners of highways in the same county, relating to the laying

out of a new highway or altering an old highway extending into both towns, or a town and a village or city, or when commissioners of highways of a town in one county, shall differ with the commissioners of highways of a town, or the officers of a village or city having the powers of commissioners of highways, in another county, relating to the laying out of a new highway, or the alteration of an old highway, which shall extend into both counties, the commissioners of highways of both towns, or the officers of the village or city having such powers, shall meet on five days written notice, specifying the time and place, within some one of such towns, villages, or cities, given by either of such commissioners or officers having powers of commissioners of highways, to make their determination in writing upon the subject of their differences. If they can not agree, they or either of them may certify the fact of their disagreement to the county court of the county, if the proposed highway is all in one county, or if in different counties, or if the county judge is disqualified or unable to act, to the supreme court; such court shall thereupon appoint three commissioners, freeholders of the county, not residents of the same town, village or city where the highway is located; or if between two counties, then freeholders of another county, who shall take the constitutional oath of office, and upon due notice to all persons interested, view the proposed highway, or proposed alteration of a highway, administer all necessary oaths, and take such evidence as they shall deem proper, and shall decide (subject to the approval of the court, as hereinafter provided) all questions that shall arise on the hearing, as to the laying out or altering of such high-

way, its location, width, grade and character of road-bed, or any point that may arise relating thereto; and if they decide to open or alter such highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the land through which such new or altered highway is proposed to pass, and shall report such evidence and decision to such court, with their assessment of damages, if any, with all convenient speed. On the coming in of such report, the court may, by order, confirm, modify or set aside the report in whole or in part, and may order a new appraisal by the same or other commissioners, and shall decide all questions that may arise before it. And all orders and decisions in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein.

§ 95. **Difference about improvements.**— When the commissioners of highways of a town, or the officers of a village or city having the powers of commissioners of highways therein, shall desire to make a new or altered highway extending beyond the bounds of such town, village or city, a better highway than is usually made for a common highway, with a special grade or road-bed, drainage or improved plan, and are willing to bear the whole or a part of the expense thereof beyond such bounds, but can not agree in regard to the same, upon written application of either of the commissioners or officers, and notice to all parties interested, such court shall make an equitable adjustment of the matters, and may direct, that in consideration of the payment of such portion of the additional

expense by the town, village or city that desires the improved and better highway, as shall be equitable, its officers, contractors, servants and agents may go into such town, village or city, and make the grade and road-bed, and do whatever may be necessary and proper for the completion of such better highway, advancing the money to do it; the amount of damages to each owner or occupant, shall be ascertained and determined by commissioners, who shall be appointed, and whose proceedings shall be conducted in the manner provided by the last preceding section; and upon the coming in of their report of damages, and of the expenses paid, such court shall, on notice to all parties interested, direct that the amount of damages assessed to each owner or occupant, if any, and all such expenses be paid by each, any or all of such towns, villages or cities as shall be just and equitable, and the damages and expenses assessed and allowed, as in this and the last preceding sections, shall be paid and collected as if fixed by the commissioners of highways of the towns, or the officers of such villages or cities having the powers of such commissioners. Every commissioner appointed as herein provided, shall be paid six dollars for each day actually and necessarily employed in such service and necessary expenses.

§ 96. **Highway in two or more towns.**—When application is made to lay out, alter or discontinue a highway located in two or more towns, all notices or proceedings required to be served upon the commissioners of highways, shall be served upon the commissioners of highways of each town; and the commissioners appointed by the court, shall deter-

mine the amount of damages to be paid by each town, and when the towns are in different counties, the application for the appointment of commissioners shall be made to a special term of the supreme court held in the district where the highway or some part of it is located; and the same proceedings shall thereafter be had in the supreme court of such district as are authorized by this chapter to be had in the county court.

§ 97. **Laying out highway upon town line.**—An application to lay out a highway upon the line between two or more towns, shall be made to the commissioners of highways of each town, who shall act together in the matter, and upon laying out any such highway, they shall divide it into two or more highway districts, in such manner that the labor and expense of opening, working and keeping the same in repair through each of such districts, may be equal as near as may be, and to allot an equal number of the districts to each of the towns; each district shall be considered as wholly belonging to the town to which it shall be allotted, for the purpose of opening and improving the highway, and for keeping it in repair; and the commissioners of highways shall cause the highway, and the partition and allotment thereof to be recorded in the office of the town clerk, in each of their respective towns.

No. 64.—§ 97.

Application to Lay Out a Highway on Town Line.

To the Commissioners of each of the Towns A and B in the County of.....

We, the undersigned L M, an inhabitant of the town of A in said county, liable to be assessed for highway labor therein, and T W, an inhabitant of the town of B, said county, and liable to be assessed for highway labor therein, hereby apply to you to lay out a highway on the line between said towns, beginning (here

insert description of the proposed highway) and which said highway will pass through the lands of J K and R S.

Dated this....day of.....18 ...

L M,
T W.

1. The proceedings are the same as where the highway is proposed to be laid out wholly within one town, except consents, releases, dedications, &c., shall be given to both of the towns, and the commissioners of highways of both towns should unite in making any order or certificate which they are required to make; and all papers used in the proceeding should be made in duplicate and one set filed in the office of the town clerk of each town. If the proposed highway is on a county line, and application is made to the court, it should be the Supreme Court at special term.

No. 65.—§ 97.

Allotment of Highway on Town Line into Districts.

(To be added to the order or certificate laying out the highway and it is ordered that the said highway be divided into (two) districts as follows: That the part thereof from.....to..... shall be one of said highway districts, and shall be allotted to the town of A and the residue of said highway shall be the other of said highway districts, and shall be allotted to the town of B.

Dated this....day of.....18 ...

A B,
C D,
E F,

Commissioners of Highways of the Town of A.

G H,
I J,
K L,

Commissioners of Highways of the Town of B.

§ 98. Final determination, how carried out.—The final determination of commissioners appointed by any court, relating to the laying out, altering or discontinuing a highway, and all orders and other papers filed or entered in the proceedings, or certified copies thereof from the court where such determination, order and papers are filed and entered, shall be forthwith filed and recorded in the town clerk's office of the town where the highway is located; and every such decision shall be carried out by the commissioners of highways of the town, the same as if they had made an order to that effect.

§ 99. **Highways abandoned.**— Every highway that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public, or laid out, shall cease to be a highway ; but the period during which any action or proceeding shall have been, or shall be pending in regard to any such highway, shall form no part of such six years; and every highway that shall not have been traveled or used as a highway for six years, shall cease to be a highway. The commissioners of highways shall file, and cause to be recorded in the town clerk's office of the town, written description, signed by them, of each highway so abandoned, and the same shall thereupon be discontinued.

No. 66.— § 99.

Description of Highway Abandoned.

We, the undersigned, commissioners of highways of the town of , in the county of , hereby certify that the highway (here describe it), has been abandoned by the public, and is no longer used as a public highway; and pursuant to section 99, of the highway law, the same is discontinued.

Dated this day of 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 100. **Highways by use.**— All lands which shall have been used by the public as a highway for the period of twenty years or more, shall be a highway, with the same force and effect as if it had been duly laid out and recorded as a highway, and the commissioners of highways shall order the overseer of highways to open all such highways to the width of at least two rods.

§ 101. **Fences to be removed.**— Whenever a highway shall have been laid out through any inclosed,

cultivated or improved lands, in conformity to the provisions of this chapter, the commissioners of highways shall give to the owner or occupant of the land through which such highway shall have been laid, sixty days notice in writing to remove his fences; if such owner shall not remove his fences within the sixty days, the commissioners shall cause them to be removed, and shall direct the highway to be opened and worked.

No. 67.—§ 101.

Notice to Owner or Occupant to Remove Fences.

To T W:

Please take notice that we, the undersigned commissioners of highways of the town of, in the county of, having by an order (or certificate), duly made and filed in the office of the town clerk of said town, bearing date the day of, 18.., laid out a public highway through your inclosed lands, do hereby require you to remove your fences from within the bounds of said highway, within sixty days after the service of this notice.

Dated day of, 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 102. **Penalty for falling trees.**—If any person shall cut down any tree on land not occupied by him, so that it shall fall into any highway, river or stream, unless by the order and consent of the occupant, the person so offending shall forfeit to such occupant, the sum of one dollar for every tree so fallen, and the like sum for every day the same shall remain in the highway, river or stream.

§ 103. **Fallen trees to be removed.**—If any tree shall fall, or be fallen by any person from any inclosed land into any highway, any person may give notice to the occupant of the land from which the tree shall have fallen, to remove the same within two

days ; if such tree shall not be removed within that time, but shall continue in the highway, the occupant of the land shall forfeit the sum of fifty cents for every day thereafter, until the tree shall be removed.

No. 68.—§ 103.

Notice to Remove Fallen Trees.

To T W:

Please take notice that a tree has fallen from your inclosed land into the highway (state where) and you are hereby required to remove the same within two days after service of this notice.

Dated this day of, 18...

L M.

§ 104. Penalty for obstruction or encroachment.—Whoever shall obstruct or encroach upon any highway, or shall unlawfully fill up or place any obstruction in any ditch for draining the water from any highway, shall forfeit for every such offense the sum of five dollars.

§ 105. How removed and liability for not removing.—The commissioners of highways shall serve upon the owner or occupant of lands adjoining that part of a highway within their town, in which any obstruction or encroachment may exist, a notice specifying the extent and location of such obstruction or encroachment, and directing such owner or occupant to remove the same within a specified time, not more than sixty days after the service of the notice. If such owner or occupant shall neglect or refuse to remove such obstruction or encroachment within such time, he shall forfeit to the town the sum of twenty-five dollars; and the commissioners may remove such obstructions or encroachments at the expense of the town, which may be recovered by action, of such owner or occupant; or the said commissioners may bring an action in any

court of competent jurisdiction, to compel such owner or occupant to remove such obstruction or encroachment. Actions by commissioners of highways, as in this section provided, shall be in the name of the town.

No. 69.— § 105.

Notice to Remove Obstruction or Encroachment.

To T W:

You are hereby notified by the undersigned commissioners of highways of the town of.....in the county of , that the highway in highway district No. in said town adjoining the premises owned (or occupied) by you (state where) have been encroached upon (or obstructed) to the extent of (state how much) by the erection of a (or as the case may be) and you are hereby directed to remove the same within sixty days after the service of this notice.

Dated this....day of.....18...

A B,
C D,
E F,

Commissioners of Highways.

§ 106. Private road.—An application for a private road shall be made in writing to the commissioners of highways of the town in which it is to be located, specifying its width and location, courses and distances, and the names of the owners and occupants of the land through which it is proposed to be laid out.

(R. S. pp. 1379, 1383; post, pp. 882–893.)*

No. 70.— § 106.

Application for a Private Road.

To the Commissioners of Highways of the Town of.....in the County of..... :

The undersigned an inhabitant of said town and liable to be assessed for highway labor therein, hereby makes application to you to lay out a private road for his use and benefit, beginning (insert description, giving its width and location, courses and distance) and said proposed road will run through the land of T W, occupied by R S.

Dated this....day of.....18...

L M.

*So in the original.

§ 107. **Jury to determine necessity and assess damages.**—One or more of the commissioners to whom the application shall be made, shall appoint as early a day as the convenience of the parties interested will allow, when, at a place designated in the town, a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof.

§ 108. **Copy application and notice delivered to applicant.**—Such commissioners shall deliver to the applicant a copy of the application to which shall be added a notice of the time and place appointed for the selection of the jury, addressed to the owners and occupants of the land.

No. 71.—§ 108.

Notice to Owner and Occupant.

To T W, Owner and R S, Occupant :

L M, of the town of....., in the county of....., having made written application to us, the undersigned, as commissioners of highways of said town, to lay out a private road for his use and benefit in said town, a copy of which is hereto attached, you are hereby notified that a jury will be selected at the house of....., in said town, on the....day of....., 18.., at.....o'clock in the.....noon, for the purpose of determining upon the necessity of such road, and assessing the damages therefor.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 72.—§ 108.

Affidavit of Service of Notice.

COUNTY OF..... }
TOWN OF..... } ss. :

L M, being duly sworn, says that he served the application and notice hereto attached on T W and R S, on the....day of.....,

18., by delivering to and leaving with each of them, copies of the same (or if served by leaving copies at the residence, so state).

L M.

Subscribed and sworn to before me, }
 this....day of....., 18... }

G H,

Justice of the Peace.

§ 109. **Copy and notice to be served.**—The applicant on receiving the copy and notice shall, on the same day, or the next day thereafter, excluding Sunday and holidays, cause such copy and notice to be served upon the persons to whom it is addressed, by delivering to each of them who resides in the same town a copy thereof, or in case of his absence, by leaving the same at his residence, and upon such as reside elsewhere, by depositing in the post-office a copy thereof to each, properly inclosed in an envelope, addressed to them respectively at their post-office address, and paying the postage thereon, or, in case of infant owners, by like service upon their parent or guardian. •

§ 110. **List of jurors.**— At such time and place, on due proof of the service of the notice, one or more of the commissioners shall present a list of the names of eighteen resident freeholders of the town, in no wise of kin to the applicant, owner or occupant, or either of them, and not interested in such lands.

• § 111. **Names struck off.**— The owners or occupants of the land, may strike from the list not more than six names, and the applicant a like number, and of the number which remain, the six names standing first upon the list shall be the jury.

• § 112. **Place of meeting.**—The commissioner or commissioners present, shall then appoint some con-

venient time and place for the jury to meet, and shall summon them accordingly.

No. 73.—§ 112.

Summons for Jury.

COUNTY OF..... }
TOWN OF } ss.:

To (insert the names of the six jurors selected):

You are hereby summoned and required to appear at the in said town of....., on the..... day of....., 18.., at....o'clock in thenoon, to form a jury of freeholders to determine as to the necessity of laying out a private road through the lands of T W, on the application of L M, and to assess the amount of damages sustained by reason of such opening, if it is determined to open the same.

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

No. 74.—§ 112.

Oath of Jury.

You do solemnly swear, in the presence of the ever-living God, that you will well and truly determine as to the necessity of a private road across the lands of T W, as has been applied for by L M, and that you will well and truly assess the damages occasioned by the opening of such road.

No. 75.

Oath to Witnesses.

You do solemnly swear that the evidence you shall give, touching the necessity of laying out the private road as applied for by L M, and the damages to be sustained thereby, shall be the truth, the whole truth, and nothing but the truth, so help you God.

§ 113. Jury to determine and assess damages.—At least one commissioner and all the persons named and summoned on such jury, shall meet at the time and place appointed, but if one or more of the six jurors shall not appear, the commissioner or commissioners present shall summon so many qualified to serve as such jurors as will be sufficient to make

the number present six, to forthwith appear and act as such, and when six shall have so appeared, they shall constitute the jury, and shall be sworn well and truly to determine as to the necessity of the road, and to assess the damages by reason of the opening thereof

§ 114. **Their verdict.**—The jury shall view the premises, hear the allegations of the parties, and such witnesses as they may produce, and if they shall determine that the proposed road is necessary, they shall assess the damages to the person or persons through whose land it is to pass, and deliver their verdict in writing to the commissioners.

No. 76.—§ 114.

Certificate of Jury.

COUNTY OF..... }
TOWN OF..... } ss.:

We, the undersigned, being six disinterested freeholders of the said town of having met on the day of, 18.., at the house of, in said town, and having been duly sworn, well and truly to determine as to the necessity of the private road described in the application of L M, a copy of which is hereto attached, and having viewed the premises through which it is proposed to be laid out, and having heard the parties and evidence produced, do hereby certify that in our opinion it is necessary and proper to lay out a private road for the use and benefit of L M, pursuant to his said application, and we assess the damages of T W at \$

Dated this day of, 18...

(The six jurors sign here.)

§ 115. **Value of highway discontinued.**—If the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such dis-

continuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

§ 116. Papers to be recorded in the town clerk's office.—The commissioners shall annex to such verdict the application, and their certificate, that the road is laid out, and the same shall be filed and recorded in the town clerk's office.

No. 77.—§ 116.

Certificate Laying Out a Private Road.

Whereas, L M did present to us as commissioners of highways of the town of, in the county of, a written application to lay out a private road in said town for his use and benefit, hereinafter described; and six disinterested freeholders having convened, after due notice to the owners and occupants of the lands through which said road is proposed to be laid, and after viewing said lands and hearing the parties and witnesses produced, certified that said road is necessary and proper, and assessed the damages to be caused thereby, which certificate was dated the day of, 18.., and duly filed with said application, in the office of the town clerk of said town; and no motion has been made to the county court to confirm, vacate or modify (or as the case may be).

Now, therefore, we, the undersigned, commissioners of highways of said town, pursuant to section 116 of the highway law, do hereby lay out said private road as so applied for and certified to, whereof a survey has been made as follows: (here insert survey bill) and the line of survey is to be the center of the road, which is to be rods in width.

Dated this day of, 18...

A B,
C D,
E F,

Commissioners of Highways.

§ 117. Damages to be paid before opening the road.—The damages assessed by the jury shall be paid by the party for whose benefit the road is laid out, before the road is opened or used; but if the jury shall certify that the necessity of such private road was occasioned by the alteration or discontinuance of a public highway, such damages shall be paid by the town, and refunded to the applicant.

§ 118. **Fees of officers.**— Every juror, in proceedings for a private road, shall be entitled to receive for his services one dollar and fifty cents; and commissioners, of highways, their per diem compensation, to be paid by the applicant.

§ 119. **Motion to confirm, vacate, or modify.**— Within thirty days after the decision of the jury shall have been filed in the town clerk's office, the owner or occupant may apply to the county court of the county wherein such private road is situated, for an order confirming, vacating or modifying their decision; and such court may confirm, vacate and modify such decision as it shall deem just and legal. If the decision is vacated, the court may order another hearing of the matter before another jury, and remit the proceeding to the commissioners of highways of the same town for that purpose. If no such motion is made, the decision of the jury shall be deemed final. The motion shall be brought on, upon the service of papers on the adverse party in the proceeding, according to the usual practice of the court in actions and special proceedings pending therein, and the decision of the county court shall be final, except that a new hearing may be had, as herein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within two years.

§ 120. **Costs of new hearing.**— If upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

§ 121. **For what purpose private road to be used.**— Every such private road when so laid out, shall be

for the use of such applicant, his heirs and assigns; but not to be converted to any other use or purpose than that of a road; nor shall the occupant or owner of the land through which said road shall be laid out, be permitted to use the same as a road, unless he shall have signified such intention to the jury who assessed the damages for laying out such road, and before such damages were assessed,

§ 122. **Highways or roads along division lines.**—Whenever a highway or private road shall be laid along the division line between lands of two or more persons, and wholly upon one side of the line, and the land upon both sides is cultivated or improved, the persons owning or occupying the lands adjoining such highway or road, shall be paid for building and maintaining such additional fence as they may be required to build or maintain, by reason of the laying out and opening such highway or road; which damages shall be ascertained and determined in the same manner that other damages are ascertained and determined in the laying out of highways or private roads.

§ 123. **Adjournments.**—If any accident shall prevent any of the proceedings required by this chapter, relating to the laying out, altering or discontinuing of a highway, or the laying out a private road, to be done on the day assigned, the proceedings may be adjourned to some other day, and the commissioner shall publicly announce such adjournment.

ARTICLE V.

BRIDGES.

SECTION 130. When town or county expense.

131. Additional county aid.
132. Statement of expenses.
133. Supervisors to levy tax.
134. Joint liability of towns, and their joint contracts.
135. Refusal to repair.
136. Proceedings in court.
137. Commissioners to institute proceedings.
138. Their duty.
139. Commissioners to report.
140. Appeals.
141. Power of court on appeal.
142. Refusal to repair bridge.
143. Penalty and notice on bridge.
144. Offense.
145. Iron bridges.

§ 130. When town or county expense.—The towns of this state, except as otherwise herein provided, shall be liable to pay the expenses for the construction and repair of its public free bridges, constructed over streams or other waters within their bounds, and their just and equitable share of such expenses when so constructed over streams or other waters upon their boundaries, except between the counties of Westchester and New York; and when such bridges are constructed over streams or other waters forming the boundary line of towns, either in the same or adjoining counties, such towns shall be jointly liable to pay such expenses, except that when the whole expense in any one town, for any one year, for the construction, care, maintenance, preservation and repair of its bridges shall exceed one-sixth of one per centum on the assessed valuation of the taxable property of the town for that year

the county in which such town is located, shall then pay not less than one-third part of such excess. Each of the counties of this state shall also be liable to pay for the construction, care, maintenance, preservation and repair of public bridges, lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expenses of such construction, care, maintenance, preservation and repair.

§ 131. **Additional county aid.**—When it shall appear to the board of supervisors of any county that any one of the towns in their county will be unreasonably burdened by erecting or repairing any necessary free bridges in such town or upon its borders, such board of supervisors may cause such sum of money, not exceeding two thousand dollars in any one year, in addition to the amounts provided for in the last preceding section, to be raised and levied upon the county to be used to pay such portion of the expenses of erecting or repairing such bridge as such board may deem proper.

§ 132. **Statement of expenses.**—The commissioners of highways of every town in which the whole or any part of any free bridge may be, shall make and deliver to the supervisor of the town, on or before the first day of November in each year, a written statement, verified by one of them, containing a description of such bridge, the whole expense in items incurred by the town during the year preceding for its construction or repair.

No. 78.—§ 132.

Statement to the Supervisor of the Expenses of Bridges.

We, the undersigned, commissioners of highways of the town of, in the county of, pursuant to section 132 of the highway law, hereby render to the supervisor of said

town a statement of the expenses incurred by us in the erection and repair of the free public bridges of said town as follows: (Here give an itemized account of the expenses incurred on each of the bridges.)

Dated this....day of....., 18...

A B,
C D,
E F,

Commissioners of Highways.

COUNTY OF }
TOWN OF } ss.:

A B, one of the commissioners of highways of said town, being duly sworn, says the foregoing statement, which is subscribed by him, is true.

A B.

Subscribed and sworn to before me, }
this....day of....., 18... }

G H,
Justice of the Peace.

§ 133. Supervisors to levy tax.—Every supervisor to whom such statement is delivered shall present the same to the board of supervisors of his county at its next annual session thereafter, and the board of supervisors shall levy upon the taxable property of the county a sum sufficient to pay its proportion of such expense and the same when collected shall be paid to the commissioners of highways of such town to be applied toward the payment of such expense.

§ 134. Joint liabilities of towns, and their joint contracts.—Whenever any two or more towns shall be liable to make or maintain any bridge or bridges, the same shall be built and maintained at the joint expense of such towns, without reference to town lines. The commissioners of highways of all the towns, or one or more of such towns, the others refusing to act, may enter into a joint contract for making and repairing such bridges.

§ 135. Refusal to repair.—If the commissioners of highways of either of such towns, after notice in writing from the commissioners of highways of any other of such towns, shall not within twenty days give their consent in writing to build or repair any such bridge, and shall not within a reasonable time thereafter do the same, the commissioners of highways giving such notice may make or repair such bridge, and then maintain an action in the name of the town, against the town whose commissioners neglect or refuse to join in such making or repairing, and in such action, the plaintiffs shall be entitled to recover so much from the defendant, as the town would be liable to contribute to the same, together with costs and interest.

No. 79.—§ 135.

Notice to Commissioners of Adjoining Towns.

To the Commissioners of Highways of the Town of.....in the County of.....

WHEREAS, the bridge (here describe it) has become, and is, unsafe for public use and travel (state in what respect), you are hereby notified and required to join with the undersigned commissioners of the town of....., in the county of..... in rebuilding (or repairing) said bridge, and to give your consent in writing to the same within twenty days after the service of this notice, pursuant to section 135 of the highway law.

Dated this....day of....., 18...

A B,

C D,

E F,

Commissioners of Highways of the Town of.....

No. 80.—§ 135.

Consent to Rebuild or Repair Bridge.

To the Commissioners of Highways of the Town of....., in the County of.....

Pursuant to your notice served on us, dated the....day of..... 18..., and to section 135 of the highway law, we, the undersigned commissioners of highways of the town of....., in the county

of....., hereby consent to join with you in rebuilding (or repairing) the (designate the bridge), it being the same bridge mentioned in your said notice.

Dated this....day of....., 18..

A A,

B B,

C C,

Commissioners of Highways of the town of.....

No. 81.—§ 135.

Commissioners Refusal to Build Bridge.

To L M, N O and R S, Freeholders of the Town of.....:

We, the undersigned, commissioners of highways of the towns ofand..... having been duly served with your petition bearing date the.....day of.....18..., relating to the (designate the bridge) on the (designate the stream) between said towns, do hereby refuse to rebuild (or repair said) bridge for want of funds (or as the case may be):

Dated this....day of.....18...

A B,

C D,

E F,

Commissioners of Highways of the Town of.....

A A,

B B,

C C,

Commissioners of Highways of the Town of.....

§ 136. Proceedings in court.—Whenever any adjoining towns shall be liable to make or maintain any bridge over any streams dividing such towns, whether in the same or different counties, three freeholders in either of such towns may, by petition signed by them, apply to the commissioners of highways in each of such towns, to build, rebuild or repair such bridge, and if such commissioners refuse to build, rebuild or repair such bridge within a reasonable time, either for want of funds or any other cause, such freeholders, upon affidavit and notice of motion, a copy of which shall be served on each of the commissioners, at least eight days before the hearing, may apply to the supreme court

at a special term thereof, to be held in the judicial district in which such bridge, or any part thereof, shall be located, for an order requiring such commissioners to build, rebuild or repair such bridge, and the court upon such motion may, in doubtful cases, refer the case to some disinterested person to ascertain the requisite facts in relation thereto, and to report the evidence thereof, to the court. Upon the coming in of the report, in case of such reference, or upon or after the hearing of the motion, in case no such reference shall be ordered, the court shall make an order thereon as the justice of the case shall require. If the motion be granted in whole or in part, whereby funds shall be needed by the commissioners to carry the order into effect, such court shall specify the amount of money required for that purpose, and how much thereof shall be raised in each town.

No. 82.—§ 136.

Petition of Freeholders to Commissioners of Adjoining Towns.

To A B, C D and E F, Commissioners of Highways of the Town of in the County of, and A A, B B and C C, Commissioners of Highways of the Town of..... in the County of.....:

We, the undersigned, L M, N O and R S, do respectfully, pursuant to section 136 of the highway law, petition and apply to you, and show that we are severally freeholders of the said town of, and that the highway bridge known as the (here designate the bridge) which crosses the (name the stream) a stream forming the boundary line between said towns of..... and..... has become and is out of repair and is unsafe for public use and travel (state in what respects) that said bridge has been repaired and maintained at the joint expense of said towns, and said towns are jointly liable to make and maintain a bridge at said point.

And we hereby petition and apply to you the said commissioners to rebuild or (repair) the bridge at said point.

Dated this....day of.....18...

L M,
N O,
R S.

No. 83.—§ 136.

Notice of Motion.

SUPREME COURT.—..... COUNTY.

IN THE MATTER OF THE APPLICATION OF L M, N O AND R S, CERTAIN FREEHOLDERS OF THE TOWN OF FOR AN ORDER REQUIRING THE COMMISSIONERS OF HIGHWAYS OF THE TOWNS OF AND TO REBUILD A JOINT BRIDGE KNOWN AS THE BRIDGE.

To A B, C D and E F, Commissioners of Highways of the Town of, in the County of, and A A, B B and C C, Commissioners of Highways of the Town of, in the County of

Take notice that an application will be made to this court at a special term thereof, to be held at the court-house, in the of on the day of, 18.., at the opening of the court on that day, for an order requiring you, the said commissioners, to rebuild (or repair) the bridge mentioned in the affidavit hereto attached, and requiring money to be appropriated or raised therefor, and for such other and further relief as to the court may seem right. The application will be made on affidavit and papers, copies of which are herewith served on you.

Dated this day of, 18...

L M,
N O,
R S.

No. 84.—§ 136.

Affidavit for an Order to Build a Bridge.

SUPREME COURT.

(Entitled as form No. 83.)

COUNTY OF } ss.:
TOWN OF

L M, N O and R S, being severally duly sworn, say that they are freeholders of the town of, said county, that said town joins the town of in the county of, and the (name the stream) forms the boundary line between said towns; that at (describe where) a free public bridge has been maintained at the joint expense of said towns, and said towns are jointly liable for the building, rebuilding, repairs and maintenance of such bridge at such point; that such bridge is (describe the kind of bridge fully) and has become and is unsafe and unfit for public use and travel, (describe fully the condition the bridge is in) and that in our opinion it would be more for the interests of the said towns to rebuild, than to repair said bridge; (or as the case may be) that on the day of 18.., the above-named affiants united in a petition to A B, C D and E F, commissioners of highways of the said town of, and A A, B B

and C C, commissioners of highways of the said town of....., pursuant to section 136 of the highway law, which petition was duly served on each of said commissioners, and which requested them to rebuild (or repair) said bridge at said point; that thereafter and on theday of....., 18.., said commissioners served on us a written refusal as follows: (Here set forth the refusal) that in our opinion an (iron) bridge should be built, and that the expense should be between \$..... and \$..... (approximate the expense as nearly as possible and insert any other facts deemed necessary).

L M.
N O.
R S.

Subscribed and sworn to before me, }
this....day of....., 18... }

G H.

No. 85.—§ 136.

Order of Court to Rebuild Bridge.

At a special term of the Supreme Court, held at the court-house in the....of....., on the....day of....., 18...

Present.—Hon., justice.

(Entitled as in form No. 83.)

On reading and filing the affidavit of L M, N O and R S, dated the....day of....., 18.., setting forth that (here set forth the substantial facts of the affidavit), with proof of due service of a copy of said affidavit and notice of motion upon each of the commissioners of highways of said towns, and after hearing J D, of counsel for said applicants, in favor of said motion, and D B, of counsel (or no one appearing) for the said commissioners opposed, and no reference being ordered (or as the case may be), it is hereby ordered, pursuant to section 137 of the highway law, that said commissioners build a (here describe the kind of bridge) at (here describe the place), at the joint expense of said towns, not to exceed dollars, and that one-half of the said expense shall be chargeable to each of said towns, to be assessed, levied and collected thereon, as other town charges are assessed, levied and collected.

§ 137. Commissioners to institute proceedings.—

The commissioners of highways of any such town, may institute and prosecute proceedings under this chapter, in the name of the town, to compel the

commissioners of such adjoining towns, to join in the building, rebuilding or repair of any such bridge, in like manner as freeholders are hereby authorized.

§ 138. *Their duty.*—The order for building, rebuilding or repairing a bridge being made, and a copy thereof being served on the commissioners of highways of such adjoining towns respectively, the commissioners of highways of such towns shall forthwith meet and fix on the plan of such bridge, or the manner of repairing the same, and shall cause such bridge to be built, rebuilt or repaired out of any funds in their hands applicable thereto; and if an adequate amount of funds are on hand, they shall cause the same to be built, rebuilt or repaired upon credit, or in part for cash and in part upon credit, according to the exigency of the case; and the commissioners may enter into a contract for building, rebuilding or repairing such bridge, pledging the credit of each town for the payment of its appropriate share, so far as the same shall be upon credit.

§ 139. *Commissioners to report.*—The commissioners of highways of each town, shall make a full report of their proceedings in the premises to the town board, at the time of making their annual report. They shall attach to the copy of the order granted by the supreme court, an accurate account under oath, of what has been done in the premises, and deliver the same to the supervisor of their town. The board of supervisors at their annual meeting, shall levy a tax upon each of such towns, when in the same county, and upon the appropriate town when in different counties, for its share of the costs of building, rebuilding or repairing such bridge, after deducting all payments actually made

by the commissioners thereon ; which tax, including prior payments, shall in no case exceed the amount specified in the order.

§ 140. Appeals.— Either party aggrieved by the granting or refusing to grant such order by the court at special term, may appeal from such decision to the general term of the supreme court for the review of the decision. The general term may alter, modify or reverse the order, with or without costs.

§ 141. Power of court on appeal.— The special term may grant or refuse costs as upon a motion, including also witnesses' fees, referees' fees and disbursements. The appeal provided for in the last preceding section, shall conform to the practice of the supreme court, in case of appeal from an order of a special term, to the general term.

§ 142. Refusal to repair bridge.— Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever any such bridge shall have fallen down, or been swept away by a freshet or otherwise, if the commissioners of highways of the adjoining towns, after reasonable notice of such condition of the bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild it, then whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge, or in rebuilding the same, by any person or corporation, shall be a charge on such adjoining towns, each being liable for its just proportion ; and the person or corporation who has made such expenditure, or shall make such expenditures, may apply to the supreme court, at a special term, for

an order requiring such towns severally to reimburse such expenditures, which application shall be made by serving papers upon the commissioners of highways of each of such towns at least eight days; and the court may grant an order requiring each of the adjoining towns to pay its just proportion of the expenditure, specifying the same; and the commissioners of highways in each of such towns shall forthwith serve a copy of such order upon the supervisor of each of their towns, who shall present the same to the board of supervisors, at their next annual meeting. The board of supervisors shall raise the amount charged upon each town by the order, and cause the same to be collected and paid to such persons or corporation as incurred the expenditure. The order shall be appealable.

§ 143. *Penalty, and notice on bridge.*—The commissioners of highways may fix and prescribe a penalty, not less than one, nor more than five dollars, for riding or driving faster than a walk on any bridge in their town, whose chord is not less than twenty-five feet in length and put up and maintain in a conspicuous place at each end of the bridge, a notice in large characters, stating each penalty incurred.

§ 144. *Offense.*—Whoever shall ride or drive faster than a walk over any bridge, upon which notice shall have been placed, and shall then be, shall forfeit for every offense, the amount fixed by such commissioners, and specified in the notice.

§ 145. *Iron bridges.*—No town or its officers shall be compelled to accept or pay for an iron or steel bridge exceeding two hundred feet in length, or

having a span or spans exceeding one hundred feet in length, constructed therein or upon its borders, until the state engineer and surveyor shall certify to the completion of the bridge, pursuant to the contract under which it shall have been constructed, with his approval of the manner of its construction and the material thereof; and all contracts made for the construction of any such bridge, shall be subject to the provisions of this section.

ARTICLE VI.

MISCELLANEOUS PROVISIONS.

SECTION 150. Papers, where filed.

- 151. When commissioners do not act.
- 152. Costs on motion.
- 153. Injuries to highways.
- 154. When town not liable for bridge breaking.
- 155. Steam traction engine on highway.
- 156. Trees, to whom they belong.
- 157. Carriages meeting to turn to the right.
- 158. Intemperate drivers.
- 159. Drivers, when to be discharged.
- 160. Leaving horses without being tied.
- 161. Owners of certain carriages liable for acts of drivers.
- 162. Term "carriage" defined.
- 163. Entitled to free use of highways.
- 164. Penalties, how recovered.
- 165. Extent of this chapter.*

§ 150. Papers, where filed.— All applications, certificates, appointments and other papers relating to the laying out, altering or discontinuing of any highway shall be filed by the commissioners of highways as soon as a decision shall have been made thereon in the town clerk's office of their town.

* So in the original.

§ 151. **When commissioners do not act.**— When any commissioner or other officer appointed by a court under this chapter shall neglect or be prevented from serving, the court which appointed him shall appoint another in his place.

§ 152. **Costs on motion.**— Costs of a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway may be allowed in the discretion of the court not exceeding fifty dollars. Costs of any other motion in a proceeding in a court of record, authorized by this chapter, may be allowed in the discretion of the court not exceeding ten dollars.

§ 153. **Injuries to highways.**— Whoever shall injure any highway or bridge maintained at the public expense, by obstructing or diverting any creek, water-course or sluice, or by dragging logs or timber on its surface, or by any other act, or shall injure, deface or destroy any mile-stone or guide-post erected on any highway, shall for every such offense, forfeit treble damages.

§ 154. **When town not liable for bridge breaking.**— No town shall be liable for any damage resulting to person or property, by reason of the breaking of any bridge, by transportation on the same, of any vehicle and load, together weighing four tons or over; but any owner of such vehicle or load, or other person engaged in transporting or driving the same over any bridge, shall be liable for all damages resulting therefrom.

§ 155. **Steam traction engines on highway.**— The owner of a carriage, vehicle or engine, propelled by steam, his servant or agent, shall not allow, permit

or use the same to pass over, through or upon any public highway or street, except upon railroad tracks, unless such owners, or their agents or servants, shall send before the same, a person of mature age, at least one-eighth of a mile in advance, who shall notify, and warn persons traveling or using such highway or street, with horses or other domestic animals, of the approach of such carriage, vehicle or engine; and at night such person shall carry a red light, except in incorporated villages and cities.

§ 156. **Trees, to whom they belong.**—All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner or occupant of such land, except such of them as may be requisite to make or repair the highway or bridges on the same land.

§ 157. **Carriages meeting to turn to the right.**—Whenever any persons traveling with any carriages, shall meet on any turnpike road or highway, the persons so meeting shall seasonably turn their carriages to the right of the center of the road, so as to permit such carriages to pass without interference or interruption, under the penalty of five dollars for every neglect or offense, to be recovered by the party injured.

§ 158. **Intemperate drivers not to be engaged.**—No person owning any carriage for the conveyance of passengers, running or traveling upon any highway or road, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or to the excessive use of spirituous liquor; and if any such owner shall violate the provisions of this section, he shall forfeit at the

rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment.

§ 159. Drivers, when to be discharged. — If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, the owner of such carriage shall, on receiving written notices of the fact, signed by any one of said passengers, and certified by him on oath, forthwith discharge such driver from his employment; and every such owner, who shall retain, or have in his service within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice.

§ 160. Leaving horses without being tied. — No driver of any carriage used for the purpose of conveying passengers for hire, shall leave the horses attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars.

§ 161. Owners of certain carriages liable for acts of drivers. — The owners of every carriage running or traveling upon any turnpike road or highway, for the conveyance of passengers, shall be liable jointly and severally, to the party injured, for all injuries

and damages done by any person in the employment of such owners, as a driver, while driving such carriage, whether the accident* occasioning such injury or damage be willful or negligent, or otherwise, in the same manner as such driver would be liable.

§ 162. Term "carriage" defined.—The term "carriage," as used in this article, shall be construed to include stage-coaches, wagons, carts, sleighs, sleds and every other carriage or vehicle used for the transportation of persons and goods, or either of them, and bicycles, tricycles and all other vehicles propelled by manumotive or pedomotive power.

§ 163. Entitled to free use of highways.—The commissioners, trustees, or other authorities having charge or control of any highway, public street, parkway, driveway or place, shall have no power or authority to pass, enforce, or maintain any ordinance, rule or regulation, by which any person using a bicycle or triycle, shall be excluded or prohibited from the free use of any highway, public street, avenue, roadway, driveway, parkway or place, at any time when the same is open to the free use of persons having and using other pleasure carriages; but nothing herein, shall prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in highways, public streets, driveways, parkways and places, in such manner as to limit and determine the proper rate of speed with which such vehicles may be propelled, nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances, nor to prohibit the use any

*So in the original.

vehicle upon that part of the highway, street or parkway, commonly known as the foot-path or sidewalk.

§ 164. Penalties, how recovered.— All penalties or forfeitures given in this chapter, and not otherwise specially provided for, shall be recovered by the commissioners of highways, in the name of the town in which the offense shall be committed; and when recovered, shall be applied by them in improving the highways and bridges in such town.

CHAPTER VII.

REGULATION OF FERRIES.

SECTION 170. Licenses.

171. Undertaking.

172. Appendages for rope ferries.

173. Superintendent of public works may lease right of passage.

174. When schedule to be posted.

§ 170. Licenses.— The county court in each of the counties of this state, or the city court of a city, may grant licenses for keeping ferries in their respective counties and cities, to such persons as the court may deem proper, for a term not exceeding five years. No license shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner is not a suitable person or shall neglect to apply after being served with eight days written notice from such other person of the time and place at which he will apply for such license, or having obtained such license, shall neglect to comply with the conditions of the license, or maintain the ferry. Every license shall be entered in the book of minutes of the court by the clerk; and a certified

copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used, shall divide two counties or cities, or a county and city, a license obtained in either of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters.

No. 86.—§ 170.

Notice to Owner of Lands of Application for a License for a Ferry.

To T W:

Please take notice that the undersigned will apply to the..... county court, at a term thereof to be held at.....in the of....., on the....day of....., 18..., at the opening of the court on that day, or as soon thereafter as a hearing can be had, for a license to be granted to the undersigned to keep a ferry across the.....river from the termination of the highway running through your land to (give a particular description of the location of the ferry.)

Dated this....day of....., 18...

L M.

Nc. 87.— 170.

Proof of Service of Notice.

COUNTY OF..... }
TOWN OF..... } ss.:

L M being duly sworn, says that at the town of....., in the county of....., on the....day of....., 18..., he personally served on T W the within notice by delivering to and leaving with him a true copy of the same.

L M.

Subscribed and sworn to before me, }
this....day of.....18.. }

G H,
Justice of the Peace.

No. 88.—§ 170.

Application for Ferry by the Owner of the Land.

To the County Court of County:

The application of T W, of the town of in said county, respectfully shows that he is the owner of the land in said town on the bank of the river through (or near) which the

public highway runs leading from to the said river, and that a ferry ought to be established for the convenience and accommodation of the public across the said river at the place aforesaid; wherefore, the undersigned hereby applies to the said court to grant him a license to establish such ferry, pursuant to sections 170 and 171 of the highway law.

Dated this....day of....., 18...

L M.

No. 89.—§170.

Application for a Ferry by a Person Not Owning the Land.

To the County Court of County:

The application of L M, respectfully shows that he is a resident of the town of in said county, and that a ferry ought to be established for the convenience and accommodation of the public across the river at the place where the highway crosses the land of T W to the said river; and the said T W, who is the owner of the land through which the highway runs as aforesaid, having neglected to make application for such license, and due service of the notice of this application having been made upon him, which notice and proof of service is hereto attached. Wherefore, the undersigned petitions this court to grant him a license to establish such ferry, pursuant to sections 170 and 171 of the highway law.

Dated this....day of....., 18...

L M.

No. 90.—§ 170.

License for a Ferry.

At a term of thecounty court held at the court-house in the.....of.....on the....day of....., 18...

Present — Hon....., county judge.

WHEREAS, L M of the town of....., in said county, has made application for a license to keep a ferry across the..... river at (describe the place) in said town, it is hereby ordered and determined that the license be granted to the said L M to keep a ferry at the said place in said town for the term of five years from this date, and the said L M is allowed to collect and receive ferriage for the transportation of travelers, property and effects over and across the said ferry at and after the following rates, and for no greater sum or sums for such transportation, viz.: (give the rates, and also specify the hours that the ferry is to be run.)

No. 91.—§ 170.

Certificate of Clerk indorsed on a Copy.

STATE OF NEW YORK, }
 } ss.:
 COUNTY OF..... }

I do hereby certify that I have compared the within copy of a license with the original this day entered of record in this court, and that the same is a correct copy thereof and of the whole of said original.

In witness whereof, I have hereunto affixed my name and my official seal this....day of....., 18...

P. B. [L. s.]
 Clerk.

§ 171. Undertaking.—Every person applying for such license shall, before the same is granted, execute and file with the clerk of the court his undertaking, with one or more sureties, approved by the court, to the effect that he will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same as shall be necessary during the several hours in each day, and at such rates as the court shall direct.

No. 92.—§ 171.

Undertaking.

STATE OF NEW YORK, }
 } ss.:
 COUNTY OF..... }

Whereas, I, L M, of the town of, in said county, have this day applied to the county court for a license to keep a ferry on the river, in the town of, in said county.

Now, therefore, we the said L M and R S, as his surety (or sureties, as the case may be), do hereby jointly and severally undertake to and with the people of the State of New York, that the said L M shall faithfully attend and keep such ferry, provided a license be granted as aforesaid, with such and so many sufficient and safe boats, and a sufficient number of men to work the same, together with sufficient implements for said ferry, as shall be necessary, during the several hours in each day, and at such rates as said court shall direct.

Dated this day of; 18...

L M.
 R S.

(Acknowledgment, justification, and approval, as in form No. 1.)

§ 172. **Appendages for rope ferries.**—Any person licensed to keep a ferry may, with the written consent of the commissioners of highways of the town where such ferry may be, erect and maintain within the limits of the highway, at such point as shall be designated in such consent, a post or posts, with all necessary braces and appendages, for a rope ferry.

§ 173. **Superintendent of public works may lease right of passage.**—The superintendent of public works may where ferries are now maintained at tide-water, lease the right of passage for foot passengers across state lands adjoining tide-water for a period not exceeding ten years, on such conditions as he may deem advantageous to the state.

§ 174. **When schedules to be posted.**—Every person licensed to operate or control any ferry in this state, or between this state and any other state, operating from or to a city of fifty thousand inhabitants or over, shall post in a conspicuous and accessible position outside and adjacent to each entrance to such ferry, and in at least four accessible places, in plain view of the passengers upon each of the boats used on such ferry, a schedule plainly printed in the English language, of the rates of ferriage charged thereon, and authorized by law to be charged for ferriage over such ferry. If any such person shall fail to comply with the provisions of this section, or shall post a false schedule, he shall forfeit the sum of fifty dollars for each days neglect or refusal to post such schedule, or any of them, to be recovered by any person who shall sue therefor, in any court of competent jurisdiction.

ARTICLE VIII.

REPEALING AND OTHER LAWS

SECTION 180. Laws repealed.

181. Saving clause.

182. Construction.

183. When to take effect.

Schedule.

§ 180. Laws repealed.— Of the laws enumerated in the schedule hereunto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 181. Saving clause.— The repeal of a law, or any part of it specified in the annexed schedule, shall not affect or impair any act done, or right accruing, accrued or acquired, or penalty, forfeiture, or punishment incurred prior to the time when this act takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent, as if such laws had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending February twenty-eighth, eighteen hundred and ninety-one, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

§ 182. Construction.— The provisions of this chapter, so far as they are substantially the same as those laws existing on February twenty-eighth, eighteen hundred and ninety-one, shall be construed as a

continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new enactments; and references in laws not repealed to provisions of law incorporated into this chapter and repealed, shall be construed as applying to the provisions so incorporated: Nothing in this chapter shall be construed to amend or repeal any provision of the Penal or Criminal Code.

§ 183. When to take effect.—This chapter shall take effect on the first day of March, eighteen hundred and ninety-one.

SCHEDULE OF LAWS REPEALED.

Revised Statutes...	Part I, chapter 16.....	All.
Revised Statutes...	Part I, chapter 20, title 13.	All.
Laws of	Chapter	SECTIONS.
1832.....	107.....	All.
1833.....	149.....	All.
1832.....	274.....	All.
1834.....	267.....	All.
1835.....	154.....	All.
1836.....	122.....	All.
1837.....	431.....	All.
1840.....	300.....	All.
1841.....	225.....	All.
1845.....	180.....	5, 6, 7, 9, 12, 13, 14.
1847.....	455.....	3, 4, 5, 6, 7, 8, 9, 11, 12, 20, 21, 22, 23.
1853.....	63.....	All.
1853.....	135.....	All.
1853.....	174.....	All.
1855.....	225.....	All.
1857.....	383.....	All.
1857.....	491.....	All.
1857.....	615.....	1.
1857.....	639.....	All.
1858.....	51.....	All.
1858.....	103.....	All.
1860.....	61.....	All.
1860.....	468.....	All.
1861.....	30.....	All.
1861.....	311.....	All.
1862.....	243.....	All.
1863.....	93.....	All.
1863.....	444.....	All.
1864.....	395.....	All.
1865.....	442.....	All.
1865.....	522.....	7.
1866.....	180.....	All.
1866.....	770.....	All.
1868.....	791.....	All.
1868.....	843.....	All.
1869.....	24.....	All.
1869.....	131.....	1.

SCHEDULE OF LAWS REPEALED— (*Continued*).

Laws of	Chapter	SECTIONS.
1869.....	593.....	All.
1870.....	461.....	All.
1872.....	274.....	1.
1873.....	63.....	All.
1873.....	69.....	All.
1873.....	395.....	All.
1873.....	448.....	All.
1873.....	477.....	All.
1873.....	773.....	All.
1874.....	169.....	All.
1874.....	570.....	All.
1875.....	22.....	All.
1875.....	196.....	All.
1875.....	341.....	All.
1876.....	340.....	All.
1876.....	348.....	All.
1877.....	197.....	All.
1877.....	344.....	All.
1878.....	44.....	All.
1878.....	49.....	All.
1878.....	114.....	All.
1878.....	245.....	All.
1879.....	67.....	All.
1880.....	114.....	All.
1880.....	305.....	All.
1880.....	308.....	All.
1880.....	503.....	All.
1881.....	233.....	All.
1881.....	513.....	All.
1881.....	696.....	All.
1881.....	700.....	All.
1883.....	346.....	All.
1883.....	371.....	All.
1883.....	398.....	All.
1884.....	220.....	All.
1884.....	251.....	All.
1884.....	359.....	All.
1884.....	396.....	All.
1884.....	479.....	All.
1886.....	269.....	All.
1886.....	344.....	All.
1886.....	422.....	All.
1886.....	452.....	All.
1887.....	471.....	All.

SCHEDULE OF LAWS REPEALED — (*Concluded*).

Laws of	Chapter	SECTIONS.
1887.....	526.....	All.
1887.....	704.....	All.
1888.....	240.....	All.
1888.....	260.....	All.
1889.....	120.....	All.
1889.....	146.....	All.
1889.....	259.....	All.

STATE OF NEW YORK, }
 OFFICE OF THE SECRETARY OF STATE. } ss. :

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FRANK RICE,
Secretary of State.

THE TOWN LAW.

BEING CHAPTER 569, LAWS OF 1890.

AN ACT in relation to towns, constituting chapter twenty of the general laws.—[Approved by the Governor June 7, 1890; passed, three-fifths being present.]

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

CHAPTER TWENTY OF THE GENERAL LAWS.

THE TOWN LAW.

- ARTICLE 1. Towns as corporations (§§ 1-5).
2. Town meetings and the election and tenure of town officers (§§ 10-39).
3. Qualifications of town officers (§§ 50-67).
4. General duties of town officers (§§ 80-86).
5. Division fences (§§ 100-108).
6. Strays and chattels doing damage, floating timbers and wrecks (§§ 120-150).
7. The town board (§§ 160-183).
8. Town-houses, lock-ups and burial grounds (§§ 190-195).
9. The municipal debt law (§§ 210-214).
10. Town business in counties containing more than three hundred thousand inhabitants (§§ 220-232).
11. Repealing and other clauses (§§ 240-243).

ARTICLE I.

TOWNS AS CORPORATIONS.

SECTION 1. Short title.

2. Town, a municipal corporation.
3. Disposition of town property, upon alteration of town boundaries.
4. Apportionment of debts.
5. Meetings of town boards, in two or more towns.

SECTION 1. Short title.— This chapter shall be known as the town law.

§ 2. Town, a municipal corporation.— A town is a municipal corporation comprising the inhabitants within its boundaries, and formed for the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as have been, or may be conferred or imposed upon it by law.

§ 3. Disposition of town property, upon alteration of town boundaries.— When the boundaries of a town owning real or personal property shall be altered, either by a division of a town into two or more towns or by the annexation of a part of its territory to another town or towns, the town boards of the several towns affected by such alterations shall meet as soon as may be after the first town meetings subsequently held in such towns, and shall make such agreement concerning the disposition to be made of such real and personal property, and the apportionment or the proceeds, as they shall deem equitable, and take all measures, and execute all conveyances necessary to carry

such agreement into effect. If no such agreement shall be made within six months after such town meetings, the town board of each town in which any portion of such real property, or in whose possession any of such personal property shall be, shall, as soon as may be, sell and convey such part of the real property as shall be included within the limits of the town as fixed by such alteration, and such of the personal property as may be in its possession; and the proceeds arising from the sale shall be apportioned between the several towns interested therein, by the town boards of all the towns, according to the amount of the taxable property of the town divided or altered, as the same existed immediately before such division or alteration, to be ascertained by the last assessment-roll of such town. But no town cemetery or burial-ground shall be sold or divided, but the same shall belong to the town within which it may be situated after a division of the town shall have been made, and no lots heretofore granted by the people of this state to any town for the support of the gospel and of schools, commonly called the gospel and school lots, shall be so sold or apportioned.

§ 4. **Apportionment of debts.**—Debts owed by a town so divided or altered, shall be apportioned in the same manner as the personal property of the towns and each town shall thereafter be charged with its share of such debts, according to the apportionment.

§ 5. **Meetings of town boards of two or more towns.**—Whenever a meeting of the town boards of two or more towns shall be required, in order to carry into

effect the provisions of this article, such meeting may be called by either of the supervisors of such towns, by giving at least three days' written notice to all the other members of such town boards of the time and place of such meeting.

ARTICLE II.

TOWN MEETINGS, AND THE ELECTION AND TENURE OF TOWN OFFICERS.

SECTION 10. Time and place of annual town meeting.

11. Changing place of annual town meeting.

12. Election of officers.

13. Term of office.

14. Justices of the peace.

15. Assessors.

16. Commissioners of excise.

17. Commissioners of highways.

18. Overseers of the poor.

19. Additional inspectors of election.

20. Ballots for full term and vacancies.

21. Justices in new towns.

22. When more than four justices may hold office.

23. Fence viewers.

24. Powers of annual town meetings.

25. Special town meetings.

26. Notices of town meetings.

27. Presiding officers of town meeting.

28. Clerk of meeting.

29. Duration of town meeting.

30. Challenges.

31. Minutes of proceedings.

32. Transaction of business not requiring a ballot.

33. Votes to expend over five hundred dollars.

34. Notice of propositions to be determined by ballot.

35. Proclamation of opening and closing polls.

SECTION 36. Erection or discontinuance of pounds.

37. Election of pound-masters.

38. Balloting.

39. Canvass of votes.

§ 10. Time and place of annual town meeting.— The citizens of the several towns in this state, except in counties containing upwards of three hundred thousand inhabitants, qualified by the constitution to vote for elective officers, shall annually, after the year eighteen hundred and ninety-one, on the second Tuesday of February, assemble and hold town meetings in their respective towns, at such place in each town as the electors thereof at their annual town meeting shall from time to time appoint. When any town shall have been authorized by the board of supervisors of the county to hold its annual town meetings in its separate election districts, the electors in each of such election districts may, in like manner, appoint the place of holding their annual town meeting in such election district. If no place or places shall have been fixed for such meeting, the same shall be held at the place or places of the last annual town meeting in the town or election district. The board of supervisors of any county may by resolution adopted at any annual meeting fix the time when the annual town meetings in such counties shall be held, which shall be on some day between the first day of February and the first day of May inclusive, and such time when so fixed shall not be changed for the period of three years.

§ 11. Changing place of annual town meeting.— The electors of a town may, upon the application of fifteen electors therein, to be filed with the town

clerk twenty days before an annual town meeting is to be held, determine at such meeting, by ballot, where future town meetings shall be held. Where town meeting in any town are held in separate election districts, the electors of each district may, at an annual town meeting, determine by resolution where its future town meetings shall be held.

No. 1.—§§ 11, 34, 172.

Application for Vote by Ballot at Town Meeting.

To C D, Town Clerk of the Town of....., in the County of.....:

The undersigned, fifteen electors (or the undersigned commissioners of highways, or twenty freeholders, or as the case may be), of said town of, hereby make (or makes) application to you for a vote to be taken by ballot at the next annual (or at a special) town meeting to be held in said town, on the question of (state fully the question to be voted upon and if the application is made by a town officer or officers to raise money for purposes pertaining to his or their duties, they must file with the application a statement of their account, similar to their annual statement to the town board.)

Dated this....day of.....18...

(Sign here,)

§ 12. Election of officers.— There shall be elected at the annual town meeting in each town, by ballot, one supervisor, one town clerk, one justice of the peace, one assessor, one collector, one commissioner of excise, one or two overseers of the poor, except in the counties of Richmond and Kings; one, two or three commissioners of highways, not more than five constables, and two inspectors of election for each election district in the town. If there shall be any vacancies in the offices of justice of the peace, assessor, commissioners of excise, commissioners of highways, or overseers of the poor, of any town at the time of holding its annual town meeting, persons shall then also be chosen to fill such vacancies, who shall hold their offices for the residue of the

unexpired term for which they are respectively elected. All such officers, except justice of the peace, shall hold their respective offices until others are elected or appointed in their places and have qualified.

§ 13. **Term of office.**—Supervisors, town clerks, inspectors of election and constables, when elected, shall hold their respective offices for one year, and until others are elected or appointed in their places, and have qualified. But whenever there is or shall be a change in the time of holding town meetings in any town, persons elected to such offices at the next annual town meeting after such change shall take effect, shall enter upon the discharge of their duties at the expiration of the term of such, their predecessors, and serve until the next annual town meeting thereafter or until their successors are elected and qualified.

§ 14. **Justices of the peace.**—There shall be four justices of the peace in each town, divided into four classes, one of whom shall be annually elected and hold his office four years, commencing on the first day of January next succeeding his election.

§ 15. **Assessors.**—Then there shall be three assessors in each town, divided into three classes, each of whom shall hold his office three years.

§ 16. **Commissioners of excise.**—There shall be three commissioners of excise in each town, composing the board of excise of such town, who shall be divided into three classes, each of whom shall hold his office three years. No supervisor, town clerk, justice of the peace or trustee of a village shall be a commissioner of excise.

§ 17. **Commissioners of highways.**— The electors of each town may, at their annual town meeting, determine by resolution whether there shall be elected in their town one or three commissioners of highways. If only one shall be determined upon, and it shall be a town having but one commissioner of highways, one commissioner only for a full term shall thereafter be elected, who shall hold his office for one year. If three shall be determined upon, three commissioners of highways shall then be elected for the terms of one, two or three years respectively; and the person having the greatest number of votes for each term so designated, shall be deemed duly elected, and shall hold his office for the term so designated, and one commissioner only, for a full term, shall thereafter annually be elected, who shall hold his office for three years. Whenever any town shall have determined upon having three commissioners of highways, and shall desire to have but one, the electors thereof may do so by a resolution taken at an annual town meeting, and when such resolution shall have been adopted, no other commissioner shall be elected or appointed until the term or terms of those in office at the time of adopting the resolution shall expire or become vacant; and they may act until their terms shall severally expire or become vacant, as fully as if three continued in office. When there shall be but one commissioner of highways in any town, he shall possess all the powers and discharge all the duties of commissioners of highways as prescribed by law.

§ 18. **Overseers of the poor.**— The electors of each town may, at their annual town meeting, determine

by resolution whether they will elect one or two overseers of the poor, and the number so determined upon shall be the number to be elected. If only one be determined upon, one overseer of the poor shall thereafter be annually elected, who shall hold his office for one year. If two overseers of the poor are determined upon, then two overseers of the poor shall be elected for the terms of one and two years respectively; and each elector shall designate on his ballot the person intended for the term one or two years, and the person having the greatest number of votes for such term so designated shall be deemed duly elected, and shall hold his office for the term so designated; and one overseer of the poor only, for the full term, shall thereafter annually be elected, who shall hold his office for two years. Whenever any town shall have determined upon having two overseers of the poor, and shall desire to have but one, the electors thereof may so determine by a resolution at an annual town meeting, and thereafter no other overseers shall be elected or appointed, until the term of the overseer continuing in office at the time of adopting the resolution shall expire or become vacant, and the overseer in office may continue to act until his term shall expire or become vacant. When there shall be but one overseer of the poor in any town, he shall possess all the powers and discharge all the duties of overseers of the poor, as prescribed by law.

§ 19. Additional inspectors of election.—The presiding officers of each annual town meeting shall, immediately after the votes are canvassed, appoint by writing, another inspector of election for each

election district, to be associated with the two elected, to be selected from the two persons in each election district who shall have the highest number of votes, next to the two inspectors elected; and no ballot shall be counted, upon which more than two names for inspectors shall appear.

§ 20. **Ballots for full term and vacancies.**—When the electors of any town are entitled to vote for more than one justice of the peace, assessor, commissioner of excise, commissioner of highways or overseer of the poor, each elector may designate upon his ballot the person intended for a full term and for a vacancy, and if there are two vacancies, they may be designated as the longer and the shorter vacancy; and if three vacancies, the longer, shorter and shortest vacancy, and each person having the greatest number of votes with reference to each designation, shall be deemed duly elected for the term or vacancy designated. If ballots are voted without designation, the first name on the ballot shall be deemed as intended for the full term of the office voted for, the second name for the longer vacancy, the third name for the shorter vacancy and the fourth name for the shortest vacancy. The provisions of this section shall apply to new towns erected; and officers to be elected in such towns, except for a full term, shall be deemed elected to fill vacancies.

§ 21. **Justices in new towns.**—If there be one or more justices of the peace residing in a new town, when erected, they shall be deemed justices of the peace thereof, and shall hold their offices according to their respective classes; and only so many shall

be elected as shall be necessary to complete the number of four for the town.

§ 22. When more than four justices may hold office.—

If by the erection of a new town, or the annexation of a part of one town to another, there shall at any time be more than four justices of the peace residing in any town, they shall hold and exercise their offices in the town in which they reside, according to their classes respectively; but on the expiration of the term of office of two or more justices, being in the same class, only one person shall be elected to fill the vacancy in that class. Whenever by the erection of a new town, or the annexation of a part of one town to another, any town shall be deprived of one or more justices of the peace, by their residence being within the part set off, the inhabitants of such town shall, at its next annual town meeting, supply the vacancy so produced in the classes to which such justices belong.

§ 23. Fence viewers.—The assessors and commissioners of highways elected in every town shall, by virtue of their offices, be fence viewers of their town.

§ 24. Powers of annual town meetings.—The electors of each town may, at their annual town meeting:

1. Determine what number of constables, not exceeding five, and pound-masters shall be chosen in their town for the then ensuing year;
2. Elect such town officers as may be required to be chosen;
3. Direct the prosecution or defense of all actions and proceedings in which their town is interested, and the raising of such sum therefor as they may deem necessary;

4. Take measures and give directions for the exercise of their corporate powers ;

5. Make provisions and allow rewards for the destruction of noxious weeds and animals, as they may deem necessary, and raise money therefor ;

6. Establish and maintain pounds at such places within their town as may be convenient ;

7. Direct public nuisances in their town, affecting the security of life and health, to be changed, abated or removed, and raise a sum of money sufficient to pay the expense thereof ;

8. Make from time to time such prudential rules and regulations, as they may think proper, for the better improving of all lands owned by their town, in its corporate capacity, whether commons or otherwise ; for maintaining and amending partition or other fences around or within the same, and directing the time and manner of using such land ;

9. Make like rules and regulations for ascertaining the sufficiency of all fences in such town and for impounding animals ; impose such penalties on persons offending against any rule or regulation established by their town, excepting such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offense, and apply the same, when recovered, in such manner as they may think most conducive to the interests of their town ;

10. In towns bound to support their own poor, direct such sum to be raised, as they may deem necessary, for such purpose, and to defray any charges that may exist against the overseers of the poor in their town ;

11. Determine any other question lawfully submitted to them ;

take the constitutional oath of office, before entering upon his duties as such presiding officer.

§ 28. Clerk of meeting.—The town clerk last before elected or appointed, or, if he be absent, such person as shall be chosen by the electors present, shall be the clerk of the town meeting, and shall keep faithful minutes of its proceedings, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting; such person chosen by the electors present shall take the constitutional oath of office before entering upon his duties as such clerk.

§ 29. Duration of town meeting.—Town meetings shall be kept open for the purposes of voting in the daytime only, between the rising and setting of the sun, and, if necessary, may be continued by a vote of the meeting during the next day, and no longer, and be adjourned to another place not more than one-fourth of a mile from the place where it was appointed.

§ 30. Challenges.—If any person offering to vote at any town meeting or upon any question arising at such town meeting shall be challenged as unqualified, the presiding officers shall proceed thereupon in the manner prescribed in the general election law when challenges are made, which law, with its penalties, is made applicable thereto, and no person whose vote shall have been received upon such challenge shall be again challenged upon any other question arising at the same town meeting.

§ 31. Minutes of proceedings.—The poll-list and minutes of the proceedings of every town meeting,

subscribed by the clerk of such meeting, and by the officers presiding, shall be filed in the office of the town clerk within two days after such meeting and there preserved.

§ 32. Transaction of business not requiring a ballot.—The business of the towns which requires a vote of the people otherwise than by ballot shall be commenced at twelve o'clock noon of the day of the annual town meeting and completed without adjournment. No question involving the expenditure of money shall be introduced after two o'clock in the afternoon of the same day. All questions upon motion made at town meetings shall be determined by the majority of the electors voting, and the officers presiding at such meeting shall ascertain and declare the result of the votes upon each question.

§ 33. Votes to expend over five hundred dollars.—All votes in town meetings upon any proposition to raise or appropriate money or incur any town liability exceeding five hundred dollars shall be by ballot; if five hundred dollars or less may be viva voce, unless ballot is required by the law authorizing the expenditure.

§ 34. Notice of propositions to be determined by ballot.—No proposition or other matter than the election of officers, shall be voted upon by ballot at any town meeting, unless the town officers or other persons entitled to demand a vote of the electors of the town thereon, shall, at least twenty days before the town meeting, file with the town clerk a written application, plainly stating the question they desire to have voted upon, and requesting a vote thereon

at such town meeting. When town officers, as such, make the application for a vote to raise money for purposes pertaining to their duties, they shall file with their application a statement of their account to date, with the facts and circumstances which, in their opinion, make the appropriation applied for necessary, and their estimation of the sum necessary for the purpose stated, which statement may be examined by any elector of the town, and shall be publicly read by the town clerk at the meeting when and where the vote is taken, at the request of any elector. The town clerk shall, at the expense of his town, give at least ten days' notice, posted conspicuously in at least four of the most public places in town, of any such proposed question, and that a vote will be taken by ballot at the town meeting mentioned. He shall also, at the expense of his town, provide a ballot-box, properly labeled, briefly indicating the question to be voted upon, into which all ballots voted upon the question indicated shall be deposited. He shall also prepare and have at the town meeting a sufficient number of written or printed ballots, both for and against the question to be voted upon, for the use of the electors. The vote shall be canvassed, the result determined and entered upon the minutes of the meeting, the same as votes given for town officers.

(See form No. 1.)

§ 35. Proclamation of opening and closing polls.—Before the electors shall proceed to elect any town officer, proclamation shall be made of the opening of the polls, and proclamation shall in like manner be made of each adjournment and of the opening and closing of the polls until the election be ended.

§ 36. **Erection or discontinuance of pounds.**—Whenever the electors of any town shall determine at an annual town meeting, to erect one or more pounds therein, and whenever a pound shall now be erected in any town, the same shall be kept under the care and direction of a pound-master, to be elected or appointed for that purpose. The electors of any town may, at annual town meeting, discontinue any pounds therein.

§ 37. **Election of pound-masters.**—Pound-masters may be elected either (1) by ballot; (2) by ayes and noes, or (3) by the rising or dividing of the electors, as the electors may determine.

§ 38. **Balloting.**—When the electors vote by ballot, all the officers voted for, except commissioners of excise shall be named in one ballot, which shall contain written or printed, or partly written and partly printed, the names of the persons voted for, and the offices to which such persons are intended to be elected, and shall be delivered to the presiding officers so folded as to conceal the contents, and shall be deposited by such officers in a box, to be constructed, kept and disposed of, as near as may be, in the manner prescribed in the general election law. Commissioners of excise shall be voted for upon a separate ballot, which shall be deposited in a separate box marked "Excise." A poll-list shall be kept by the clerk of the meeting on which shall be entered the name of each person voting by ballot.

§ 39. **Canvass of votes.**—At the close of the polls at any town meeting, the canvassers shall proceed to canvass the votes publicly at the place where the meeting was held. Before the ballots are opened

they shall be counted and compared with the poll-list, and the like proceedings shall be had as to ballots folded together, and difference in number as are prescribed in the general election law. The result of the canvass shall be read by the clerk to the persons there assembled, which shall be notice of the election to all voters upon the poll-list. The clerk shall also enter the result at length in the minutes of the proceedings of the meeting kept by him, and shall, within ten days thereafter, transmit to any person elected to a town office, whose name is not on the poll-list as a voter, a notice of his election.

ARTICLE III.

QUALIFICATION OF TOWN OFFICERS.

SECTION 50. Eligibility to town offices.

51. Oath of office.

52. Collectors' undertaking.

53. Filing and lien of collectors' undertaking.

54. Constables' undertaking.

55. Refusal to serve as overseer of highways or poundmaster.

56. Town officers to administer oaths.

57. Certificate of election of justices.

58. Justices' undertakings.

59. Official acts legalized.

60. Supervisors' undertaking.

61. Undertaking of commissioner of excise.

62. Undertaking of overseer of the poor.

63. Undertaking of commissioner of highways.

64. Resignation of town officers.

65. Filling of vacancies.

66. Form of undertaking, and liability thereon.

67. County clerk to report omissions of town officers.

§ 50. **Eligibility to town offices.**— Every elector of the town shall be eligible to any town office, except inspectors of election shall also be able to read of write. But no county treasurer, superintendent of the poor, school commissioner, trustee of a school district, or United States loan commissioner, shall be eligible to the office of supervisor of any town or ward in this state.

§ 51. **Oath of office.**— Every person elected or appointed to any town office, except justice of the peace, shall before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of office, and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without reward, and shall within eight days be filed in the office of the town clerk, which shall be deemed an acceptance of the office; and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.

No. 4.— § 51.

Oath of Office.

STATE OF NEW YORK,	} ss.:
COUNTY OF.....	
Town of.....	

I, T W, of the town of, in the county and State aforesaid, having been elected of said town, do solemnly swear (or affirm) that I will support the constitution of the United States of America, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of of said town to the best of my ability.

And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any moneys or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.

T W.

Subscribed and sworn to before me, {
this....day of, 18.. }

G H,
Justice of the Peace.

ACCOMPANYING CERTIFICATE.

STATE OF NEW YORK, }

COUNTY OF..... } ss.:

Town of }

I, G H, a justice of the peace in and for the town of, in the county aforesaid, do hereby certify that on the ... day of, 18.., before me personally appeared T W, of the town aforesaid, who then and there duly took and subscribed the foregoing oath of office.

Dated this....day of....., 18...

G H,
Justice of the Peace.

Sup 1697

§ 52. Collector's undertaking.—Every person elected or appointed to the office of collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute an undertaking with two or more sureties, to be approved by the supervisor, to the effect that he will well and faithfully execute his duties as collector, pay over all moneys received by him, and account in the manner and within the time provided by law for all taxes upon the assessment-roll of his town delivered to him for the ensuing year, and shall deliver such undertaking to the supervisor of the town.

No. 5.—§ 52.

Collector's Undertaking.

Whereas, N O, of the town of....., in the county of, was on the day of....., 18.., duly elected collector of said town; now, therefore, we, the said N O, prin-

cipal, and R S and T W of the town of, his sureties, do hereby, pursuant to section 52 of the town law, jointly and severally undertake that the said N O will well and faithfully execute his duties as collector, and pay over all moneys received by him as such collector, to the officer or person entitled thereto, and account in the manner and within the time provided by law for all taxes upon the assessment-roll of his town, delivered to him for the ensuing year.

Dated this....day of....., 18...

N O.
R S.
T W.

ACKNOWLEDGMENT TO BE ADDED.

STATE OF NEW YORK, }
COUNTY OF } ss.:
Town of..... }

On this....day of....., 18.., before me, the subscriber, personally appeared N O, R S, and T W, to me personally known to be the same persons mentioned in, and who executed the foregoing undertaking, and severally acknowledged that they executed the same.

G H,
Justice of the Peace.

JUSTIFICATION OF SURETIES.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

R S and T W, the sureties mentioned in the foregoing undertaking, being severally duly sworn, each for himself says, that he is a resident and freeholder (or householder) within this State, and is worth.....dollars over and above all debts and liabilities which he owes or has incurred, and exclusive of property exempt by law from levy and sale on execution.

R S.
T W.

Subscribed and sworn to before me, }
this....day of....., 18... }
G H,
Justice of the Peace.

APPROVAL BY SUPERVISOR.

I hereby approve of the foregoing undertaking, and of the sufficiency of the sureties therein named.

A B,
Supervisor of the Town of.....

§ 53. **Filing and lien of collector's undertaking.**—The supervisor shall, within six days thereafter, file the undertaking, with his approval indorsed thereon, in the office of the county clerk, who shall make an entry thereof, in a book to be provided for the purpose, in the same manner as judgments are entered of record; and every such undertaking shall be a lien on all the real estate held jointly or severally by the collector or his sureties within the county, at the time of the filing thereof, and shall continue to be such lien, until its condition, together with all costs and charges which may accrue by the prosecution thereof, shall be fully satisfied.

§ 54. **Constables' undertakings.**—Every person elected or appointed to the office of constable shall, before he enters on the duties of his office, and within ten days after he shall be notified of his election or appointment, execute in the presence of the supervisor or town clerk of the town, with at least two sufficient sureties, to be approved by such supervisor or town clerk, an undertaking to the effect that such constable and his sureties will pay to each and every person, who may be entitled thereto, all such sums of money as the constable may become liable to pay on account of any execution which shall be delivered to him for collection; and also pay each and every person for any damages which he may sustain from or by any act or thing done by such constable by virtue of his office. The supervisor or town clerk shall indorse on the undertaking his approval of the sureties therein named, and shall cause the same to be filed in the office of the town clerk within ten days thereafter.

No. 6.—§ 54.

Constable's Undertaking.

Whereas, D E, of the town of, in the county of, was on the day of, 18..., duly elected (or appointed) constable of said town; now, therefore, we, the said D E, principal, and N O and R S, of the town of, his sureties, do hereby, pursuant to section 54 of the town law, jointly and severally undertake that the said D E will pay to each and every person who may be entitled thereto, all such sums of money as he may become liable to pay on account of any execution which shall be delivered to him for collection; and also pay each and every person for any damages which he may sustain from or by any act or thing done by said D E as such constable, by virtue of his office.

Dated this....day of....., 18...

D E.
N O.
R S.

(Acknowledge, justify and approve as in form for collector's undertaking.)

§ 55. Refusal to serve as overseer of highways or pound-master.— If any person chosen or appointed to the office of overseer of highways or pound-master shall refuse to serve, he shall forfeit to the town the sum of ten dollars.

§ 56. Town officers to administer oaths. — Any town officer may administer any necessary oath in any matter or proceeding lawfully before him, or to any paper to be filed with him as such officer.

§ 57. Certificate of election of justices.— The clerk of every town meeting, at which an election for justice of the peace shall have been had, shall, within ten days thereafter, transmit to the clerk of his county a certificate of the result of such election under his hand, which shall be presumptive evidence of the facts therein certified.

No. 7.—§ 57.

Certificate of Election of Justices.

COUNTY OF..... }
 TOWN OF..... } ss.:

To F G, Esq., County Clerk of ... County:

I do hereby certify that at the annual town meeting of the said town of, held therein on the day of, 18.., G H was duly elected justice of the peace for a full term.

Dated this day of, 18..

C D,
 Town Clerk.

§ 58. Justices' undertakings.— Every justice of the peace elected or appointed in any of the towns or cities of this state, except the city of New York, and any city whose charter requires such officer to give a bond or undertaking, shall, before he enters upon the duties of his office, execute an undertaking with two sureties to be approved by the supervisor of the town, or the town clerk thereof where the justice of the peace is also supervisor of the town, or the common council of the city in which the justice shall reside, to the effect that he will pay over on demand, to the officer, or person or persons entitled to the same, all moneys received by him by virtue of his office, and file the undertaking in the office of the clerk of the city or town in which he resides. Every justice shall also, on or before the fifteenth day of January next succeeding his election, file with the county clerk a certificate of the clerk of the city or town in which he resides, that he has filed such undertaking, and thereupon take before the county clerk his oath of office; but, if elected or appointed to fill a vacancy, at the time existing or in any new town, he shall file such undertaking and certificate and take the oath of office, and

enter upon the duties thereof, within fifteen days after notice of his election or appointment. No justice of the peace shall take his oath of office until he shall have filed such certificate with the county clerk.

No. 8.—§ 58.

Justice's Undertaking.

Whereas, G H, of the town of....., in the county of, was on the... day of....., 18.., duly elected justice of the peace of said town; now, therefore, we, the said G H, principal, and R S and N O, of the town of....., his sureties, do hereby, pursuant to section 58 of the town law, jointly and severally undertake that the said G H will pay over on demand to the officer, person or persons entitled to the same, all moneys received by him by virtue of his office.

Dated this.....day of....., 18..

G H.
N O.
R S.

(Acknowledgment, justification and approval the same as in the form of collector's undertaking).

- **§ 59. Official acts legalized.**—The official acts heretofore done of every justice of the peace, duly elected or appointed to the office, so far as such official acts may be affected, impaired or questioned, by reason of the failure of any such justice to take and subscribe the official oath, or give an official bond as required by law, are hereby legalized, ratified and confirmed, and any justice of the peace heretofore elected or appointed to the office who has neglected to file an official bond within the time prescribed by law, may file an undertaking as herein required, within sixty days from and after the passage of this act, and the same shall have all the force, effect and validity as if the bond had been filed within the time required by law. Nothing herein contained shall affect any action or proceeding now pending.

No. 9.—§ 59.

Certificate That Justice Has Filed His Undertaking.

COUNTY OF }
 TOWN OF } ss.:

To F G, Esq., County Clerk of County:

I do hereby certify that G H has filed his undertaking as justice of the peace of said town, pursuant to section 58 of the town law.

Dated this day of, 18...

C D,
 Town Clerk.

§ 60. **Supervisor's undertaking.**—Every supervisor hereafter elected or appointed shall, within thirty days after entering upon his office, make and deliver to the town clerk of the town his undertaking, with such sureties as the town board shall prescribe, to the effect that he will well and faithfully discharge his official duties as such supervisor, and that he will well and truly keep, pay over and account for all moneys and property, including the local school fund, if any, belonging to his town and coming into his hands as such supervisor; and such undertaking shall, after its execution, be presented to the town board for their approval as to its form, and the sufficiency of the sureties therein, and until the same shall be so approved, none of the moneys, books, documents, papers or property of the town shall be turned over or delivered to such supervisor elect.

No. 10.—§ 60.

Supervisor's Undertaking.

Whereas, A B, of the town of, in the county of, was on the ... day of, 18..., duly elected supervisor of said town; now, therefore, we, the said A B, principal, and N O and R S, of the town of, his sureties do hereby, pursuant to section 60 of the town law, jointly and severally undertake that the said A B, will well and faithfully discharge his official duties as such supervisor, and that he will

well and truly keep, pay over and account for all moneys and property belonging to his town and coming into his hands as such supervisor (including the local school fund, if any).

Dated this....day of....., 18...

A B.
N O.
R S.

(Acknowledgment, justification and approval, the same as the form of collector's undertaking, except that it must be approved by the town board.)

§ 61. Undertaking of commissioner of excise.—Each commissioner of excise shall, before he enters upon the duties of his office, execute an undertaking to be approved by the supervisor of his town, to the effect that he will pay over to the supervisor of his town, within thirty days after the receipt thereof, all moneys received by him as such commissioner of excise, which undertaking shall be delivered to the supervisor, and by him filed in the office of the town clerk within ten days thereafter.

No. 11.—§ 61.

Undertaking of Commissioners of Excise.

Whereas, J J, of the town of....., in the county of....., was on the....day of....., 18..., duly elected commissioner of excise; now, therefore, we, the said J J, principal, and N O, of the town of....., his surety, do hereby, pursuant to section 61 of the town law, jointly and severally undertake that the said J J, will pay over to the supervisor of his town, within thirty days after the receipt thereof, all moneys received by him as such commissioner of excise.

Dated this....day of....., 18...

J J.
N O.

(Acknowledgment, justification and approval, the same as in the form of the undertaking of collector.)

§ 62. Undertaking of overseer of the poor.—Every person elected or appointed overseer of the poor in any town shall, within ten days after being notified of his election or appointment, execute an undertaking with one or more sureties, to be approved by the supervisor of his town, to the effect that he will

faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer, which undertaking shall be delivered to the supervisor and filed by him in the office of the town clerk within ten days thereafter.

No. 12.—§ 62.

Undertaking of Overseer of the Poor.

Whereas, B F, of the town of, in the county of, was on the....day of, 18.., duly elected overseer of the poor of said town; now, therefore, we, the said B F, principal, and N O of the town of, his surety, do hereby, pursuant to section 62 of the town law, jointly and severally undertake that the said B F will well and faithfully discharge the duties of his office, and will pay according to law all moneys which shall come into his hands as such overseer.

Dated this....day of, 18..

B F.
N O.

(Acknowledge, justify and approve, the same as in the form for collector's undertaking.)

§ 63. Undertaking of commissioner of highways.— Every commissioner of highways shall, within ten days after notice of his election or appointment, execute an undertaking with two or more sureties, to be approved by the supervisor of his town, to the effect that he will faithfully discharge his duties as such commissioner, and within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner, which undertaking shall be delivered to the supervisor, and filed by him in the office of the town clerk within ten days thereafter.

No. 13.—§ 63.

Undertaking of Commissioner of Highways.

Whereas, K L, of the town of, in the county of, was on the....day of, 18.., duly elected commissioner of highways; now, therefore, we, the said K L,

principal, and N O and R S of the town of, his sureties, do hereby, pursuant to section 63 of the town law, jointly and severally undertake that the said K L will faithfully discharge his duties as such commissioner, and that he will within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner.

Dated this....day of....., 18...

K L.
N O.
R S.

(Acknowledge, justify and approve, the same as in the form for collector's undertaking.)

§ 64. Resignation of town officers.— Any three justices of the peace of a town may, for sufficient cause shown to them accept the resignation of any town officer of their town; and whenever they shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town.

No. 14.—§ 64.

Resignation of a Town Officer.

To E. F., G. H. and I. J., Justices of the Peace of the Town of....., in the County of.....:

I hereby tender my resignation of the office of (name the office) of said town, for the following reasons: (Here state them.)

Dated this ...day of....., 18...

T. W.

No. 15.—§ 64.

Notice of Acceptance of Resignation.

COUNTY OF..... }
TOWN OF..... } ss.:

To C D, Town Clerk of said Town:

You are hereby notified, pursuant to section 64 of the town law, that we, the undersigned, justices of the peace of said town have, for good cause shown, accepted the resignation of T W as (name the office) of said town.

Dated this....day of....., 18...

E F,
G H,
I J,
Justices of the Peace.

§ 65. **Filling of vacancies.**—When a vacancy shall occur or exist in any town office, the town board or a majority of them may, by an instrument under their hands and seals, appoint a suitable person to fill the vacancy, and the person appointed, except justices of the peace, shall hold the office until the next annual town meeting. A person so appointed to the office of justice of the peace shall hold the office until the next annual town meeting, unless the appointment shall be made to fill the vacancy of an officer whose term will expire on the thirty-first day of December next thereafter, in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeeding his appointment. The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed. A copy of the appointment of a justice of the peace shall also be filed in the office of the county clerk, before the person appointed shall be authorized to act.

No. 16.—§ 65.

Appointment to fill Vacancy.

COUNTY OF..... }
TOWN OF..... } ss.:

Whereas, a vacancy has occurred in the office of....., of said town by the resignation (or otherwise) of T W; now therefore we, the undersigned, town board of said town, do hereby, pursuant to section 65 of the town law, appoint D B to fill the vacancy in the office of....., caused by the resignation (or otherwise) of the said T W, to serve until the next annual town meeting. (If the appointment is made to fill a vacancy in the office of justice of the peace whose term of office expires on the thirty-first day of December preceding the next town meeting, the appointment must expire at that time.)

Witness our hands and seals this day of, 18..

(Town board sign and seal here.)

No. 17.—§ 65.

Notice to Person Appointed.

COUNTY OF..... }
 TOWN OF } ss.:

To D B, Esq.:

You are hereby notified, pursuant to section 65 of the town law, that you have been appointed (name the office) of said town of, to fill the vacancy caused by the resignation (or otherwise) of T W, and you are required to take the oath of office, and file your undertaking within ten days after receiving this notice (except justices of the peace), as directed by section 51 of the town law.

Dated this... day of....., 18...

C D,
 Town Clerk.

§ 66. Form of undertaking, and liability thereon.—

Every undertaking of a town officer, as provided by this chapter or otherwise, must be executed by such officer and his sureties and acknowledged or proven and certified in like manner as deeds to be recorded, and the approval indorsed thereon. The parties executing such undertaking shall be jointly and severally liable, regardless of its form in that respect, for the damages to any person or party by reason of a breach of its terms.

§ 67. County clerk to report omissions of town officers.—The clerk of each county shall make a report to the district attorney of the county, of all omissions by any town officer to make and transmit any returns or certificates, which by the law they are required to make to such clerk, and the district attorney shall enforce the penalty by law imposed upon the delinquent officer.

ARTICLE IV.

THE GENERAL DUTIES OF TOWN OFFICERS.

SECTION 80. General duties of supervisor.

81. Town surveys.

82. Fires in woods.

SECTION 83. General duties of town clerk.

84. Delivery of books and papers by outgoing officer to successor.

85. Furniture and blank books for clerk's office.

86. Sign for clerk's office.

§ 80. General duties of supervisor.—The supervisor of each town shall:

1. Receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, and of the poor.

2. Prosecute, in the name of his town, for all penalties given by law to such town for its use, and for which no other officer is specially directed to prosecute.

3. Keep a just and true account of the receipt and expenditures of all moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose at the expense of the town, and to be delivered to his successor in office.

4. On the Tuesday preceding the annual town meeting, account with the justices of the peace and town clerk of the town, for the disbursements of all moneys received by him.

5. Receive all accounts against the town, which shall be presented to him, and present the same to the town board for audit, except such accounts as he may be required by law to present to the board of supervisors.

6. Attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of which he shall have notice, and present to such board the town audits, and such

other accounts and demands against the town, and such reports and statements as he may be required by law to present to such board.

§ 81. Town surveys.—Whenever the supervisor of any town shall be required by the state engineer and surveyor to cause a survey to be made of the bounds of his town, such supervisor, within sixty days thereafter, shall cause such survey to be made, and transmit, by mail or otherwise, a map and description thereof to the state engineer and surveyor. The expense of such survey and map shall be defrayed by the several towns whose bounds, either wholly or in part, shall be described thereby; such expense to be apportioned by the board of supervisors of the county. If any supervisor shall refuse or neglect to cause such survey to be made, he shall forfeit the sum of fifty dollars to the people of the state.

§ 82. Fires in woods.—Whenever the woods in any town shall be on fire, it shall be the duty of the justices of the peace, the supervisor and commissioners of highways of such town, and of each of them, to order such and so many of the inhabitants of such town liable to work on the highways, and residing in the vicinity of the fire, as they shall severally deem necessary, to repair to the place where such fire shall prevail, and there to assist in extinguishing the same, or in stopping its progress.

§ 83. General duties of town clerk.—The town clerk of each town shall have the custody of all the records, books and papers of the town; and he shall duly file all certificates of oaths and other papers required

by law to be filed in his office. He shall transcribe in the books of records of his town the minutes of the proceedings of every town meeting held therein, and shall enter in such book every order or direction and all rules and regulations made by any such town meeting. He shall deliver to the supervisor, before the annual meeting of the board of supervisors of the county in each year, certified copies of all entries of votes for raising money made since the last meeting of the board of supervisors, and recorded in the town book. Immediately after the qualifying of any constable elected or appointed in his town, he shall return to the clerk of the county the name of such constable. If any town clerk shall willfully omit to make such return, he shall forfeit the sum of ten dollars, to be recovered by the supervisor in the name of, and for the use of the town.

§ 84. **Delivery of books and papers by outgoing officer to successor.**—Whenever the term of office of any supervisor, town clerk, commissioner of highways or overseer of the poor shall expire, or when either of such officers shall resign, and another person shall be elected or appointed to the office, the succeeding officer shall, immediately after he shall have entered on the duties of his office, demand of his predecessor all the records, books and papers under his control belonging to such office. Every person so going out of office, whenever so required, shall deliver upon oath to his successor all the records, books and papers in his possession or under his control belonging to the office held by him, which oath may be administered by the officer to whom such delivery shall be made, and shall, at the same time, pay over

to his successor the moneys belonging to the town remaining in his hands. If any such officers shall have died, the successors or successor of such officer shall make such demand of the executors or administrators of such deceased officer, and such executors or administrators shall deliver, upon the like oath, all records, books and papers in their possession, or under their control, belonging to the office held by their testator or intestate. If any person so going out of office, or his executors or administrators, shall refuse or neglect, when lawfully required, to deliver such records, books or papers, he shall forfeit to the town, for every such refusal or neglect, the sum of two hundred and fifty dollars; and officers entitled to demand such records, books and papers may compel the delivery thereof in the manner prescribed by law.

§ 85. Furniture and blank books for clerk's office.—The town clerk of any town may, with the consent of the town board of his town, purchase or furnish for the town clerk's office all necessary bound blank books for the entering and keeping of the records of his town, and also necessary book and office cases, tables and other furniture for the use and convenience of the office and the safe-keeping of the books and papers of the town, and the expense thereof shall be a town charge, to be audited and paid as other town charges.

§ 86. Sign for clerk's office.—There shall also in like manner be furnished and kept for every town clerk's office a sign with the name of the town, followed by the words, "town clerk's office" in plain characters thereon, with sufficient board space

immediately below for posting thereon the legal notices of the town, which sign and board space shall be placed and kept on or at the outside front door of every town clerk's office, which board shall always be one of the public places upon which any legal notice in the town may be posted.

ARTICLE V.

DIVISION FENCES.

SECTION 100. Apportionment of division fence.

101. When lands may lie open.
102. Division fences on change of title.
103. Settlement of disputes.
104. Powers of fence viewers.
105. Neglect to make or repair division fences.
106. Fence destroyed by accident.
107. Damages for insufficient fence.
108. Damages for omitting to build fence.

§ 100. Apportionment of division fence. — Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division fence between such lands, unless one of such owners shall choose to let his lands lie open to the use of all animals which may lawfully be upon the other's land, and does not permit any animals lawfully upon his premises to go upon lands so lying open. When adjoining lands shall border upon any of the navigable lakes, streams or rivers of the state the owners of the lands shall make and maintain the division fence between them down to the line of low-water mark, in such lakes, streams or rivers; and when the adjoining lands shall be bounded by a line between the banks of streams of water not

navigable, and the owners or occupants thereof can not agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

No. 18.— § 100.

Apportionment of Division Fence by Owners.

We the undersigned, D B and T W, adjoining land owners of the town of, in the county of, hereby divide and apportion the division fence between our lands as follows:

D B is to maintain and keep in repair all that portion of the fence (here describe it), and T W is to maintain and keep in repair all that portion of the fence (here describe it).

Dated this....day of....., 18...

D B.
T W.

§ 101. When lands may lie open.— When the owner of any lands shall choose to let them lie open, he shall serve upon the owners of the adjoining lands a written notice to that effect, and thereafter the owners of such adjoining lands shall not be liable in any action or proceedings for any damages done by animals lawfully upon their premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. The owner of any lands so lying open, may have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, and shall refund to such owners or occupants a just proportion of the value of any division fence made and maintained by them, or if no fence has been so made or maintained upon the line or any part of it, he shall build and maintain his proportion of such division fence.

No. 19.—§ 101.**Notice that Owner Intends to let his Lands lie Open.***To D B, Esq.:*

Notice is hereby given that I intend to let my lands adjoining you (here describe them) lie open, pursuant to section 101 of the town law.

Dated this....day of....., 18..

T W.

No. 20.—§ 101.**Notice of Intention to Inclose Lands.***To D B, Esq.:*

You are hereby notified, pursuant to section 101 of the town law that I intend to inclose my lands now lying open, adjoining your lands, and you are hereby requested to build and maintain your proportion of the division fence (or as the case may be).

Dated this....day of..... 18...

T W.

No. 21.—§ 101.**Certificates of Fence Viewers on Inclosing Lands.**

COUNTY OF }
TOWN OF..... } ss.:

Whereas, D B and T W being the owners of certain adjoining lands in the said town of....., and the said D B having on or about the..... day of....., 18.., erected a division fence between the lands belonging to himself and those of T W, who allowed his lands to lie open; and whereas the said T W has recently inclosed the said land belonging to him, and a disagreement having arisen between the said parties as to the value of the said fence, and the proportion to be maintained by each: Now therefore, we, the undersigned fence viewers of said town duly chosen by the aforesaid parties to hear and determine the matter, pursuant to section 103 of the town law, after due notice to each of said owners of the time and place of this meeting, and after viewing the premises and hearing the parties, and all evidence produced, do determine as follows: That D B shall maintain and keep in repair that portion of the fence (here describe it), and that T W shall maintain and keep in repair that portion of the fence (here describe it), and that T W pay to D B the sum of \$.... as his just proportion of the value of the fence so built and maintained by D B, and that each pay one-half of the costs and expenses of this proceeding, which are \$.....

Dated this.....day of....., 18...

N O,
P R,
Fence Viewers.

§ 102. Division fences on change of title.—When-
ever a subdivision or new apportionment of any
division fence shall become necessary by reason of
transfer of the title of either of the adjoining
owners, to the whole, or any portion of the adjoining
lands, by conveyance, devise or descent, such
subdivision or new apportionment shall thereupon
be made by the adjoining owners affected thereby;
and either adjoining owner shall refund to the other
a just proportion of the value at the time of such
transfer of title, of any division fence that shall
theretofore have been made and maintained by
such other adjoining owner, or the person from
whom he derived his title, or he shall build his pro-
portion of such division fence. The value of any
fence, and the proportion thereof to be paid by any
person, and the proportion to be built by him, shall
be determined by any two of the fence viewers of
the town, in case of disagreement.

No. 22.—§ 102.

**Decision of Fence Viewers When Transfer of Title Has Been
Made.**

COUNTY OF }
TOWN OF } ss.:

Whereas, a dispute has arisen between D B and T W, adjoining
owners of land in said town, in regard to the division fence
between said lands, caused by a transfer of title of a portion of
the adjoining lands owned by D B (or as the case may be); now,
therefore, we, the undersigned fence viewers of said town, having
been duly chosen by the said owners to hear and determine the
matter, pursuant to sections 102 and 103 of the town law, and
having given due notice to each owner of the time and place of
this meeting, and having viewed the premises and heard the
parties and evidence produced, do hereby determine and decide
that the said D B shall maintain and keep in repair that portion
of the fence (here describe it), and that said T W shall maintain
and keep in repair that portion of the fence (here describe it), and
we further determine that the value of fence between said lands
is \$...., and that the said D B shall pay to said T W \$.... as his

proportion for said fence (or as the case may be), and that each pay one-half (or as the case may be) of the costs and expenses of this proceeding, which are \$....

Dated this....day of....., 18...

N O,

P R,

Fence Viewers.

§ 103. Settlement of disputes.—If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such dispute shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they can not agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.

No. 23.—§ 108.

Notice to Choose Fence Viewer.

To D B, Esq.:

Pursuant to section 103 of the town law, you are hereby required to choose, within eight days after service of this notice, a fence viewer to act with N O, a fence viewer I have chosen, in determining the dispute which has arisen between us concerning the division fence between our lands; and if you fail so to do, I shall choose both of said fence viewers.

Dated this....day of....., 18...

T W.

No. 24.—§ 103.

Certificate of Apportionment of Division Fence.

COUNTY OF..... }
 TOWN OF..... } ss.:

Whereas, a dispute has arisen between D B and T W, adjoining owners of land in said town, concerning the apportionment of the division fence between said lands; now, therefore, we, the undersigned fence viewers of said town, duly chosen to hear and determine the dispute, pursuant to section 103 of the town law, after giving due notice to said owners of the time and place of this meeting, and having viewed the premises, heard the parties and the evidence produced, do hereby determine that the said D B shall maintain and keep in repair all that portion of the fence (here describe it), and that T W shall maintain and keep in repair all that portion of the fence (here describe it), and that each pay one-half (or as the case may be) of the costs and expenses of this proceeding, which are \$.....

Dated this.....day of, 18...

N O,
 R S,
Fence Viewers.

§ 104. Powers of fence viewers.—Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses, who shall receive the same fees as witnesses in a justice's court. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers or either of them, shall be liable to an action for the same with costs.

No. 25.—§ 104.

Subpoena by Fence Viewer.

STATE OF NEW YORK, }
 COUNTY OF..... } ss.:
 Town of..... }

The People of the State of New York to L L and O O:

You and each of you, are hereby required personally to appear before the undersigned and R S, fence viewers of the said town, at (insert the place) on the....day of....., 18.., at....o'clock

in the M., to testify in regard to the matter in difference between D B and T W, in regard to their division fence on the part of D B.

Dated this day of, 18...

N O,
Fence Viewers.

§ 105. Neglect to make or repair division fence.—

If any person who is liable to contribute to the erection or repair of a division fence, shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing, and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair the same, at the expense of the party so neglecting or refusing, to be recovered from him with costs.

No. 26.—§§ 105, 108.

Appraisement of Damages by Fence Viewers for Neglect to Build or Repair Division Fence.

STATE OF NEW YORK, }
COUNTY OF } ss.:
Town of }

Whereas, D B and T W are owners of adjoining lands in said town, and each liable to make and maintain a just proportion of the division fence between said lands, which said fence has been apportioned and divided between them; and

Whereas, D B has neglected (or refused) to maintain and keep in repair his portion of said fence, by reason of which refusal or neglect his cattle (or as the case may be), entered the premises of said T W on the day of, 18.., and damaged the property of said T W; now, therefore, we, the undersigned, fence viewers of said town, duly chosen by said parties to appraise the said damages, due notice of the time and place of

this meeting having been given, and after viewing the premises and hearing the parties and evidence produced, do, pursuant to section 105 (or 108) of the town law, hereby appraise the damage sustained by T W by reason of the refusal (or neglect) of said D B to maintain or repair his portion of said division fence, at \$, to be paid by D B with the costs and expenses of this proceeding, which are \$

Dated this day of, 18..

N O,
R S,
Fence Viewers.

No. 27.—§ 105.

Notice to Build or Repair Division Fence.

To D B, Esq. :

You are hereby notified and required, pursuant to section 105 of the town law, to build and maintain (or repair) your portion of the division fence between your lands and the lands of the undersigned, beginning (state where fence is to be built or repaired) within one month after receiving this notice, in default of which I shall cause the same to be built (or repaired) at your expense.

Dated this day of, 18..

T W.

§ 106. Fence destroyed by accident.—Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him with costs.

No. 28.—§ 106.

Notice to Build Fence Destroyed by Accident.

To D B, Esq. :

You are hereby notified and required, pursuant to section 106 of the town law, to build (or repair) your proportion of the following fence, to wit: (Here describe the fence) injured (or

destroyed) by (state how) within ten days after receiving this notice; in default of which I shall cause the same to be built (or repaired) at your expense.

Dated this....day of....., 18..

T W.

§ 107. **Damages for insufficient fence.**—Whenever the electors of any town shall have made any rule or regulation, prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

(R. S., p. 905.)*

§ 108. **Damages for omitting to build fence.**—If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands where such beasts are lawfully kept, by reason of such defective fence, but shall be liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by

* So in the original.

any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed* by the fence viewers making the same, but shall be only prima facie evidence of the amount of such damage.

ARTICLE VI.

STRAYS AND CHATTELS DOING DAMAGE, FLOATING TIMBERS AND WRECKS.

SECTION 120. Strays and beasts doing damage.

121. Notice to town clerk.
122. Impounding beasts.
123. Notice to owner.
124. Charges for notices.
125. Fees of fence viewers.
126. When lien may be foreclosed.
127. Notice of sale by fence viewers.
128. Proceeds of sale.
129. Notice to owner of fence viewers' meeting.
130. Duties of fence viewers.
131. Foreclosure of lien by action.
132. Duty and fees of pound-master.
133. Surplus moneys.
134. Villages and cities deemed towns.
135. Damages from inanimate goods.
136. Penalty for conversion of floating timber.
137. Recovery of wrecked property.
138. Powers and duties of sheriffs, coroners and
wreck-masters.
139. Sale of wreck.
140. Delivery of wreck or proceeds to claimant.
141. Claimant's undertaking.
142. When owner may sue.
143. Claim for salvage.

* So in the original.

SECTION 144. Duties of wreck-masters.**145. Detention of wreck.****146. Appointment of appraisers.****147. Sale and disposition of property.****148. Publication of notices of sale.****149. Publication of notice of wrecked property.****150. Appointment of wreck-masters.**

§ 120. Strays and beasts doing damage.—Whenever any person shall have any strayed horses, cattle, sheep, swine or other beasts upon his inclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien upon such beasts for the damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beasts until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying with the provisions of this article relating thereto.

§ 121. Notice to town clerk.—If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien, shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice

in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such book shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

No. 29.— § 121.

Notice of Strays, for Town Clerk.

To all Persons Whom it may Concern :

You are hereby notified, pursuant to section 121 of the town law, that the undersigned, a resident of the town of, in the county of, N. Y., has on his inclosed lands, a strayed horse (or as the case may be) and the following is a description of the said horse (or as the case may be, giving age, color, etc., as near as may be) and that he claims a lien on such horse (or as the case may be) for his damage, charges and costs.

Dated this....day of....., 18...

D B.

§ 122. Impounding beasts.— Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they are redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

§ 123. Notice to owner.— Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not

known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

No. 30.— § 123.

Notice to Owners of Strays.

To T W, Esq.:

You are hereby notified, pursuant to section 123 of the town law, that the undersigned, a resident of the town of, in the county of, has upon his inclosed lands (or in pound, as the case may be) the following animals belonging to you (here describe them) and that the same are being held as strays (or beasts doing damage, as the case may be).

Dated this....day of.....18 ...

D B.

§ 124. Charges for notice.— The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers can not agree, they shall select another to act with them, and the decision of any two of them shall be final.

§ 125. Fees of fence viewers.— Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for certificate of the charges as ascertained by them.

§ 126. When lien may be foreclosed.— If the owner of such beasts shall not redeem the same within

three months after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon.

§ 127. Notice of sale by fence viewers.—After such three months, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted up in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidder, unless redeemed by the owner.

No. 31.—§ 127.

Notice of Sale by Fence Viewer.

Notice is hereby given that, whereas, on the day of..... 18.., there strayed on the inclosed land of D B, in the town of....., a (describe the animals), and the same not having been redeemed by the owner thereof; now therefore, in pursuance of section 127 of the town law, I shall expose the same for sale at public auction to the highest bidder, on the....day of....., 18.., at .. o'clock in thenoon at (state where) unless redeemed by the owner.

Dated this....day of....., 18...

N O,
Fence Viewer.

§ 128. Proceeds of sale.—Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs,

together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale, as are allowed on sales under executions issued out of justices' courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

§ 129. Notice to owner of fence viewers' meeting.—When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of the meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him, if he resides in the same town; if he resides elsewhere, and his post-office address is known, such notice shall be served by mail or personally.

No. 32.— § 129.

Notice to Owners of Fence Viewers' Meeting.

To T W, Esq.:

You are hereby notified, pursuant to section 129 of the town law, that the fence viewers of the town of....., in the county of....., will meet at my residence, in said town, on the.... day of....., 18.., for the purpose of assessing the damages done by your beasts on my inclosed lands in said town, and the charges and expenses for keeping the same.

Dated this....day of....., 18..

D S.

§ 130. Duties of fence viewers.—The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done,

and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimant's lien is not enforceable, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

No. 33.—§ 130.

Determination by Fence Viewers.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:
Town of

Whereas, on the....day of....., 18.., there strayed (or was found doing damage) on the inclosed lands of D B, in said town the following beasts (here describe them), which said beasts belong to T W (or, and the owner of said beasts is unknown); now, therefore, we, the undersigned fence viewers of said town, duly chosen to determine the matter submitted to us, after proof of due service of a notice of the time and place of this meeting on the owner of the beasts (or on proof that the owner of said beasts is unknown), and after viewing the premises and hearing the parties (or after hearing the claimant), and all witnesses produced, do hereby, pursuant to section 130 of the town law, determine that the said beasts entered on the inclosed lands of D B, from the premises of T W, over that portion of the division fence which belongs to T W, to maintain and keep in repair; and that the damages sustained by D B are \$...., and that the charges for keeping said beasts are \$...., and the costs and expenses of this proceeding are \$.... (or that the claimant's lien is not enforceable by reason of; state the reasons).

Dated this....day of.....18..

N O,
R S,
Fence Viewers.

§ 131. Foreclosure of lien by action.—When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon the lands of the person claiming such damages and charges, shall be proven upon the trial of such action, and no certificate of fence-viewers upon such questions shall then be necessary.

§ 132. **Duty and fees of pound-masters.**— Every pound-master shall receive and keep all beasts delivered to him as herein provided, until they shall be redeemed, sold or reclaimed, for which he shall be entitled to a reasonable compensation, not exceeding fifty cents per day for a horse or mule; twenty-five cents per day for each head of cattle, and fifteen cents per day for all other beasts, to be determined by the fence viewer making the sale, or the court before whom the action is tried, besides his fees for taking and discharging the beasts, to be paid by the owner of the beasts, if the lien is established, otherwise by the person claiming a lien thereon.

§ 133. **Surplus moneys.**— If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale, he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the overseers of the poor of the town, or, in cities, to the officers having their powers, for the use of the poor thereof, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the overseers of the poor of the town, or, in cities, to officers having their powers, he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

§ 134. **Villages and cities deemed towns.**— The villages and cities of this state shall be considered towns for the purposes of this article; and the trus-

tees of the village and the aldermen of the city shall be fence viewers therein for the purposes of this article.

§ 135. **Damages from inanimate goods.**—When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or plank, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies, and shall proceed therein in the same manner and with the same powers as herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He may at any time deliver his notice of lien to the town clerk, describing the property, and he shall keep the same in some convenient place without removal to a pound, until the property is sold or reclaimed. The same officers shall conduct proceedings therein, as in proceedings where beasts are found doing damage, and all proceeds of sale shall be in like manner, paid over and applied, subject to the same penalties and liabilities, and with the same force and effect.

§ 136. **Penalty for conversion of floating lumber.**—Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards or plank, floating in any of the waters of this state, or lying on the banks or shores of any such waters, or on any island where the same may have drifted, shall, for every offense, forfeit to the owner of such logs, or other lumber, three times the value thereof.

§ 137. **Recovery of wrecked property.**—No ship, vessel or boat, nor any goods, wares and merchan-

dise, cast by the sea or any inland lake or river upon the land, shall be deemed to belong to the people of the state, as wrecked property, but may be recovered by the owner, consignee or person having the charge thereof at the time of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

§ 138. Powers and duties of sheriffs, coroners and wreck-masters.—The sheriff, coroners and wreck-masters of every county in which any wrecked property shall be found, when no owner or other person entitled to the possession of such property shall appear, shall severally take all necessary measures for saving and securing such property; take possession thereof, in whose hands soever the same may be, in the name of the people of the state; cause the value thereof to be appraised by disinterested persons, and keep the same in some safe place to answer the claims of the persons entitled thereto.

§ 139. Sale of wreck.—If the property so saved shall be perishable, so as to render the sale thereof expedient, the officer in whose custody the same shall be, shall apply to the county court of the county, or the city court of the city, where such property may be, by a verified petition stating the facts, for an order authorizing such sale; if the court shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall make the order so applied for, and the officer having custody of the property shall sell the same at public auction, at the time and in the manner specified in the order, and the proceeds of such sale, deducting

the expenses allowed by the court, shall be paid to the treasurer of the county in which the property shall have been found.

§ 140. Delivery of wreck or proceeds to claimant.— If, within a year after such wrecked property shall have been found and saved, any person shall claim the same or the proceeds thereof, as owner or consignee, or the agent of the owner or consignee, and shall establish his claim by evidence, such court shall make an order directing the officer, in whose possession the property, or its proceeds shall be, to deliver or pay the same to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of the property.

§ 141. Claimant's undertaking.—No such order shall, however, be made unless the claimant shall deliver to such court an undertaking with one or more sufficient sureties to be approved by the court, to the effect that he will pay all damages recovered against such claimant or his representatives, within two years after the date of the undertaking, by any person establishing his title as owner of such property or proceeds. The undertaking shall be filed in the clerk's office of the county in which it shall be taken.

§ 142. When owner may sue.—The rejection by the court of any claim for wrecked property, shall not preclude the claimant from maintaining an action for the recovery of such property or its proceeds, against the officer in whose hands the same shall be; but if the plaintiff in any such action shall prevail, there shall be deducted, in addition to the salvage

and expenses charged on the property, from the damages recovered, the costs of the defense.

§ 143. **Claim for salvage.**—Every officer to whom any order duly made, for the delivery of the wrecked property, or its proceeds, shall be directed, shall present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property, and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and, after the payment or tender of the payment of such salvage and expenses, as agreed to or adjusted, the officer, in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order directed to him.

§ 144. **Duties of wreck-masters.**—Wreck-masters in the several counties, shall give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise which may be cast by the sea upon the land; and in the performance of these duties they shall employ such men as they may respectively think proper; and all magistrates, constables and citizens shall aid and assist the wreck-masters, when required in the discharge of their duties.

§ 145. **Detention of wreck.**—All sheriffs, coroners and wreck-masters, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property,

shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property shall detain the same until such salvage and expenses shall be paid, and the salvage claimed in any case shall not exceed one-half of the value of the property or proceeds, and every agreement, order or adjustment allowing a greater salvage shall be void.

§ 146. **Appointment of appraisers.**— If the amount of salvage and expenses on property saved shall not be adjusted by agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may apply to the county court of the county or the city court of a city in which such property shall be, for the appointment of suitable persons as appraisers, to adjust the amount of such salvage and expenses; and such court shall, by an order, appoint three disinterested freeholders of the county, not inhabitants of the town in which the property shall have been saved, to adjust such salvage and expenses, who, before they shall enter upon the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust. They shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced; and the written decision of the appraisers, or any two of them, as to the amount of salvage and expenses, and the sums to be paid to each person entitled to share in such salvage, or

claiming such expenses shall be final and conclusive. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge upon the property saved. Each appraiser shall be entitled to five dollars for each day's necessary attendance, and expenses.

§ 147. **Sale and disposition of property.**— If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if the salvage and expenses on such property shall not have been paid within three months after the same shall have been adjusted, or an action for the recovery of the property have been commenced, the officer in whose custody the property shall be shall sell the same at public auction, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made unless the amount thereof shall have been adjusted upon due proof, by an order of such county or city court, a copy of which order and of the evidence in support thereof, shall be transmitted by the court making it to the comptroller. If the property has been sold as perishable, the balance of the proceeds, after the salvage and expenses as adjusted, shall be paid by the county treasurer into the treasury of this state.

§ 148. **Publication of notices of sales.**— Public notice of every sale to be made of wrecked property, under the provisions of this article, shall be published by the officer making the sale, for at least two

weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

§ 149. Publication of notice of wrecked property.— Every sheriff, coroner, or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall contain a minute description of such wrecked property, and every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition. The expense of publishing every notice required to be published relating to wrecks, shall be charged on the property or proceeds to which it relates.

§ 150. Appointment of wreck-masters.— There shall continue to be fifteen wreck-masters for the county of Suffolk, twelve in the county of Queens, three in the county of Kings, two in the county of Richmond and two in the county of Westchester, who shall hold their offices for two years, and be appointed by the governor.

ARTICLE VII.

THE TOWN BOARD.

SECTION 160. Constitution and regular meetings of the town board.

161. First meeting of town board.
162. Second meeting of town board.
163. Appeal from town board, to board of supervisors.
164. Accounts of justices in criminal matters.
165. Fees of officers in criminal proceedings, when town or county charge.
166. Pay of town officers.
167. Accounts to be made in items.
168. Saving clause.
169. Traveling fees.
170. Abstract for board of supervisors.
171. Town fire companies.
172. Electing town auditors.
173. Board to be elected.
174. Powers conferred upon town auditors.*
175. Town board to appoint temporary board of auditors.
176. Compensation of town auditors; vacancies, how filled.
177. Town meeting may vote to discontinue.
178. Compensation of town officers.
179. Pound-masters' fees.
180. What deemed town charges.
181. Excise moneys, how disposed of.
182. How towns to sue and be sued, and make contracts.
183. Actions for trespass on town lands.

§ 160. Constitution and regular meetings of the town board.— The supervisor, town clerk, and the

*So in the original.

justices of the peace, or any two of such justices, shall constitute the town board in each town, and shall hold at least two meetings annually, at the office of the town clerk, one on the Tuesday next preceding the annual town meeting, termed the first meeting; and the other on the Thursday next preceding the annual meeting of the board of supervisors, termed the second meeting of the town board.

§ 161. **First meeting of the town board.**—At the first meeting of the town board, all town officers who receive or disburse any moneys of the town, shall account with the board for all such moneys received and disbursed by them, by virtue of their offices; but no member of the board shall sit as a member of the board when any account in which he is interested, is being audited by the board. The board shall make a statement of such accounts, and append thereto a certificate signed by at least a majority of them, showing the state of the accounts of each officer at the date of the certificate, which statement and certificate shall be filed with the town clerk of the town and be by him produced at the next annual town meeting, and publicly read, if requested by any elector.

No. 34.—§ 161.

Statement of Account and Certificate by Town Board.

Statement of the account of A B, supervisor of the town of....., in the county of.....

	Receipts.	Disbursements.	On hand.
Poor fund	\$500	\$400	\$100
School moneys.....	1,500	1,500
Dog fund.....	150	75	75
	\$2,150	\$1,975	\$175

COUNTY OF..... }
 TOWN OF..... } ss. :

The undersigned, a majority of the town board of said town, hereby certify, pursuant to section 161 of the town law, that we have examined the account of A B, supervisor of said town, and that the same is in all respects true and correct, of which the foregoing is a true statement, showing a balance in the hands of said supervisor belonging to said town of \$175.

Dated this....day of....., 18...

C D,
Town Clerk.

E F,
 G H,
 I J,
 K L,

Justices of the Peace.

(In the same manner, as far as applicable, make statement and certificate for every town officer who receives and distributes town money.)

§ 162. **Second meeting of town board.**—The second meeting of the town board shall be for the purpose of auditing accounts and allowing or rejecting all charges, claims and demands against the town. If any account is wholly rejected, the board shall make a certificate to that effect, signed by at least a majority of them, and file the same in the office of the town clerk. If the account is allowed, wholly or in part, the board shall make a certificate to that effect, signed by at least a majority of them, and if allowed only in part, they shall state in the certificate the items or parts of items allowed, and the items or parts of items rejected, and shall cause a duplicate of every certificate allowing an account, wholly or in part, to be made, one of which duplicates shall be delivered to the town clerk of the town, to be by him kept on file for the inspection of any of the inhabitants of the town; and the other shall be delivered to the supervisor of the town, to be by him laid before the board of supervisors of his county, at their annual meeting. The board of

supervisors shall cause to be levied and raised upon the town the amount specified in the certificate, in the same manner as they are directed to levy and raise other town charges.

No. 35.—§ 162.

Certificate of Town Board, to Board of Supervisors.

COUNTY OF..... }
 TOWN OF } ss.:

We, the undersigned, a majority of the town board of said town, hereby certify, pursuant to section 162 of the town law, that, having convened and organized at the time and place, and in the manner prescribed by section 160 of the town law for the second meeting of the town board, we proceeded to examine, audit and allow accounts presented against said town, and the following is a correct statement of the accounts so audited and allowed by us wholly or in part:

NAMES OF CLAIMANTS.	Nature of demand.	Amount claimed.	Amount allowed.

The following are the items which have been rejected by us wholly or in part:

NAMES OF CLAIMANTS.	Items rejected.	Items allowed in part.	Amount allowed.

Dated this....day of....., 18...

A B,
Supervisor.

C D,
Town Clerk.

E F,
 G H,
 I J,
Justices of the Peace.

§ 163. Appeal from town board to board of supervisors.— If any account of a justice of the peace, or town constable, for fees in criminal proceedings, is audited by a town board of any town, any taxpayer of the town may appeal from the auditing and allowance to the board of supervisors of the county, and the board of supervisors may audit and allow such account. If the account shall be disallowed, or the amount thereof reduced, the party presenting the same shall have the same right of appeal as above provided. The appeal shall be taken within fifteen days after filing the certificate of allowance, or disallowance of an account by the town board, in whole or in part, by the service of a notice of appeal in writing on the town clerk and the clerk of the board of supervisors; and the town clerk shall forthwith thereafter transmit the account to the board of supervisors of the county, to be audited and allowed by them; and the town board shall have no further jurisdiction over the account after the service of the notice of appeal. Such part of such accounts as the board of supervisors shall allow, shall be assessed and collected the same as other town charges.

No. 36.—§ 163.

Notice of Appeal to Board of Supervisors.

To C D., Town Clerk of the Town of, in the County of, and T W, Clerk of the Board of Supervisors of said County:

Take notice that the undersigned, a taxpayer of said town of (or justice of the peace or constable), hereby appeals, pursuant to section 163 of the town law, to the board of supervisors of said county, from the auditing and allowing by the town board of said town, the amount claimed by E F, a justice of the peace of said town, for fees (or from the rejection and disallowance by the town board of said town, of my claim for fees) in criminal proceedings, as follows: (Here state the claim allowed or disallowed).

Dated this day of, 18 ...

W S.

§ 164. **Accounts of justices in criminal matters.**—
The accounts rendered by justices of the peace for services in criminal proceedings shall, in all cases, contain the name and residence of the complainant, the offense charged, the action of the justice on such complaint, the constable or officer to whom any warrant on such complaint was delivered, whether the person charged was or was not arrested, and whether an examination was waived or had, and witnesses sworn thereon; and the account shall also show the final action of the justices in the premises.

No. 37.—§ 164.

Justice's Account Against County in Criminal Matter.

THE COUNTY OF, TO E F, JUSTICE OF THE PEACE OF THE
TOWN OF, IN SAID COUNTY, *Dr.*

The People vs. O O.

January 10, 189 ... Name of complainant, P P, who resides at
....., in said town.

Offense charged was grand larceny.

Upon information taken and filed I issued a warrant for the
arrest of defendant.

Warrant was delivered to N N, constable of said town.

January 12, 189 ... Defendant was arrested and brought before
me.

Defendant demanded an examination (or as the case may be),
which was had, and the following witnesses were sworn on such
examination, viz.: (Here name them).

Defendant was held to answer the charge of grand larceny and
admitted to bail (or as the case may be).

To administering oath to complainant.....	10 cents.
Drawing information.....	25 cents.

(In same manner make itemized account of fees.)

STATE OF NEW YORK, }
COUNTY OF } ss.:

E F, being duly sworn, says he is the claimant named in the
foregoing claim; that the items of such account as above set
forth are correct, and that the services charged therein have been
in fact made or rendered, and that no part thereof has been

presented to any preceding board of supervisors for audit and allowance, and that no part thereof has been paid or satisfied.

E F.

Subscribed and sworn to before me, }
 this....day of....., 18... }
 G H,
Justice of the Peace.

§ 165. Fees of officers in criminal proceedings, when town or county charge.—The fees of magistrates and other officers for services in criminal proceedings for or on account of an offense which a court of special sessions has not jurisdiction to try shall be a county charge if the magistrate had jurisdiction of the proceedings in which the services were rendered. The fees of magistrates and other officers in other criminal proceedings, or in criminal actions tried before a magistrate of the town where the offense is charged to have been committed, shall be a charge against such town. No fees shall be allowed, either as a town or county charge, to a magistrate or other officer, for services in a criminal action or proceeding, before a magistrate of one town for or on account of an offense charged to have been committed in another town and which a court of special sessions has jurisdiction to try, or which a magistrate has jurisdiction to hear and determine.

§ 166. Pay of town officers.—No town officer shall be allowed any per diem compensation for his services unless expressly provided by law.

§ 167. Accounts to be made out in items.—No account shall be audited by any board of town auditors or supervisors or superintendent of the poor for any services or disbursements unless such

account shall be made out in items and accompanied with an affidavit attached thereto, and to be filed with such account, made by the person presenting or claiming the same, that the items of such account are correct and that the disbursements and services charged therein have been in fact made or rendered or are necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied; and the chairman of the board or either of the superintendents may administer any oath required under this section.

No. 38.—§ 167.

Account Against Town.

THE TOWN OF, TO A B, *Dr.*

(Here give itemized account.)

COUNTY OF }
TOWN OF } ss.:

A B, being duly sworn, says he is the person mentioned as claimant in the foregoing account, and that the items of said account are correct, and that the disbursements and services charged therein have been in fact made or rendered and goods supplied, and that no part of the same has been paid or satisfied.

A B.

Subscribed and sworn to before me, }
this....day of....., 18... }

.....

§ 168. *Saving clause.*—Nothing in the preceding section, shall be construed to prevent any board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as such board may think proper.

§ 169. *Traveling fees.*—No traveling fees shall be allowed for traveling to subpoena a witness, beyond the limits of the county in which the subpoena was issued, or of an adjoining county, unless the board auditing the account, shall be satisfied, by

proof, that such witness, could not be supœnaed without additional travel; nor shall any traveling fees for subpœnaing witnesses be allowed, except such as the board auditing the account, shall be satisfied were indispensably necessary.

§ 170. **Abstract for board of supervisors.**—Boards of town auditors, shall annually make brief abstracts of the names of all persons who have presented to them, accounts to be audited, the amounts claimed by each of such persons, and the amounts finally audited by them respectively, and shall deliver such abstracts to the clerk of the board of supervisors, and the clerk shall cause the same to be printed, with the statements required to be printed by him.

No. 39.—§ 170.

Abstract for Board of Supervisors.

COUNTY OF..... }
TOWN OF..... } ss.:

The undersigned, town board of said town, pursuant to section 170 of the town law, hereby certify that the following is a correct abstract of the names of all persons who have presented to said board accounts to be adited, the amounts claimed by each of said persons, and the amounts audited to them respectively :

NAMES.	Amount claimed.	Amount audited.

Dated this....day of....., 18...

A B,
Supervisor.

C D,
Town Clerk.

E F,
G H,
I J,
K L,
Justices of the Peace.

§ 171. **Town fire companies.**—The town board of any town may appoint, in writing, any number of inhabitants of their town, which they may deem necessary, to be a fire company for the extinguishment of fires in their town; but no such company, as herein provided, shall be formed in any incorporated city or village. Each fire company thus formed, shall choose a captain and clerk thereof, and may establish such by-laws and regulations as may be necessary to enforce the performance, by such firemen, of their duty, and may impose such penalties, not exceeding five dollars for each offense, as may be necessary for that purpose. Such penalties may be collected by and in the name of the captains, in any court having cognizance thereof, and when collected, shall be expended by the companies for the repair and preservation of their engines and apparatus. All vacancies which may at any time happen in such companies by death, resignation or otherwise, shall, from time to time, be filled by the town board. The electors of any highway district, in which any town fire company shall have their headquarters, at a special meeting lawfully called by the town clerk, who is hereby authorized to call such special meeting, may vote by ballot a sum of money, not exceeding four thousand dollars, for the purchase of a fire-engine and apparatus. And whenever said electors shall so vote said money for the purchase of a fire-engine and apparatus, the commissioners of the highway may contract for and purchase for such district a good and sufficient fire-engine and apparatus, at a price not to exceed the sum so voted, which engine and apparatus shall be the property of said highway district, but may be used and cared for by such fire company. The pur-

chase-price of said fire-engine and apparatus shall be assessed and levied upon the property of said district and collected in the same manner as other town charges are assessed, levied and collected, except that the amount thereof shall be put in a separate column upon the tax-roll, and the board of supervisors of the county shall cause the sum as certified by the town board to be levied upon the taxable property of such highway district.

As amended by chap. 254, Laws of 1891.

§ 172. **Electing town auditors.**—The electors in each of the towns may, on the application of twenty freeholders residing therein, at any annual town meeting, determine by ballot whether there shall be elected, at the next succeeding annual town meeting, held in the town, a board of auditors, in and for the town, independent of the town board in the manner, and under the restrictions, hereinafter prescribed.

(See form No. 1.)

§ 173. **Board to be elected.**—If a majority of the ballots so cast, shall be in favor of electing a board of town auditors, there shall be elected, at the next succeeding annual town meeting, three town auditors, who shall form the board of town auditors of the town, one of whom shall be elected for one year, one for two years and one for three years; and annually thereafter, unless otherwise determined, as provided in this article, one town auditor, to serve three years.

§ 174. **Powers conferred upon town auditors.**—Upon the election or appointment and qualification of any such board of town auditors in any town, the powers of the town board of that town, with respect to

auditing, allowing or rejecting all accounts, charges, claims or demands against the town, and with respect to the examination, audit and certification of accounts of town officers, and the authorization of town expenditures, shall devolve upon and thereafter be exercised by such board of town auditors, during the continuance of such board; and with respect to the powers so conferred, and the duties so imposed, they shall be the town board of the town during their continuance. No person so elected or appointed shall hold any other office in the town during the term for which he is elected or appointed; and if he shall accept an election or appointment to any other office in the town, he shall immediately cease to be a town auditor, and the vacancy in his office shall be supplied in the manner hereinafter provided.

§ 175. Town board to appoint temporary board of town auditors.—The town board of the town in which the electors shall determine to elect a board of town auditors, or a majority of them, shall, within sixty days after the town meeting where it was so determined, convene at some suitable place in the town, at the hour of ten o'clock in the forenoon, and appoint, in writing, under their hands and seals, three persons having the qualifications herein prescribed, to be town auditors of the town, and shall immediately cause such appointment to be filed with the town clerk. The person so appointed shall, within ten days after receiving notice of their appointment, take, subscribe and file in the office of the town clerk the oath of office; and thereupon they shall be the board of town auditors of the town, and shall possess and exercise all the powers

and duties of town auditors, and shall hold and discharge the duties of the office until the next annual town meeting to be held in the town after their appointment.

§ 176. Compensation of town auditors; vacancies how filled.— Each of such town auditors shall be entitled to receive for his services three dollars for each day, not exceeding ten days in any one year. The supervisor of the town shall appoint some suitable and competent person to fill any vacancy occurring in the board of town auditors until the next annual town meeting.

§ 177. Town meeting may vote to discontinue.— At any subsequent town meeting, after the expiration of five years from the determination to elect a board of town auditors, the electors of the town may determine by ballot to abolish such board in the same manner as they determined to establish such board; and thereupon such board shall be abolished.

§ 178. Compensation of town officers.— The following town officers shall be entitled to compensation at the following rates for each day actually and necessarily devoted by them to the service of the town, in the duties of their respective offices, when no fee is allowed by law for the service:

1. The supervisor (except when attending the board of supervisors), town clerks, assessors, justices of the peace, overseers of the poor, inspectors of election, and clerks of the polls, two dollars per day, each of them.

2. Commissioners of highways, when there is but one such officer, two dollars per day; when more

than one such officer in a town, one dollar and fifty cents per day.

§ 179. Pound-masters' fees.—The pound-masters shall be allowed the following fees for their services, to wit: For taking into the pound and discharging therefrom every horse, mule and head of cattle, fifteen cents; for every other beast ten cents.

§ 180. What deemed town charges.—The following shall be deemed town charges:

1. The compensation of town officers for services rendered for their respective towns.
2. The contingent expenses necessarily incurred for the use and benefit of the town.
3. The moneys authorized to be raised by the vote of a town meeting for any town purpose.
4. Every sum directed by law to be raised for any town purpose.
5. All judgments duly recovered against a town.
6. All damages recovered against a town officer for any act done pursuant to a direction or resolution, duly adopted by the town board, or at a town meeting duly held; and all damages against any such officer for any act done in good faith, in his official capacity, without any such direction or resolution, may be made a town charge, by a vote of the town, at a town meeting duly held.
7. The costs and expenses, lawfully incurred by any town officer in prosecuting or defending any action or proceeding brought by or against the town or such officer for an official act done, shall be a town charge in all cases where the officer is required by law to so prosecute or defend, or to do such act, or is instructed to so prosecute or defend, or do such

act, by resolution duly adopted by the town board, or at a town meeting duly held. All town charges specified in this section shall be presented to the town board for audit, and the moneys necessary to defray such charges shall be levied on the taxable property in such town by the board of supervisors.

§ 181. **Excise moneys how disposed of.**—All excise moneys shall be disposed of as directed by the town board of the town in which such moneys are paid, except in those counties where the support of the poor is a county charge, in which case such moneys shall be paid into the county treasury, subject to the control of the board of supervisors.

§ 182. **How towns to sue and be sued, and make contracts.**—Any action or special proceeding for the benefit of a town, upon a contract lawfully made with any of its town officers, to enforce any liability created or duty enjoined upon those officers, or the town represented by them, or to recover any penalty or forfeiture given to such officers, or the town represented by them, or to recover damages for injury to the property or rights of such officers, or the town represented by them, shall be in the name of the town. Any action or special proceeding to enforce the liability of the town upon any such contract, or for any liability of the town for any act or omission of its town officers, shall be in the name of the town; and all contracts made by such officers for and in behalf of their towns shall be in the name of the town. When such contracts are otherwise lawfully made, they shall be deemed the contracts of the town, notwithstanding it is omitted to be stated therein that they are in the name of the town.

§ 182. **Actions for trespass on town lands.**—Whenever an action is brought by a town to recover a penalty for a trespass committed upon its land, and it shall appear upon the trial that the damages from the trespass exceed ten dollars, the town shall recover the damages and costs in lieu of the penalty, and such recovery shall be a bar to any subsequent civil action for the same trespass.

ARTICLE VIII.

TOWN-HOUSES, LOCK-UPS, AND BURIAL-GROUNDS.

SECTION 190. Town-house.

191. **Erection and control of town-house.**

192. **Lock-ups.**

193. **Electors may choose trustees of burial-grounds.**

194. **Trustees to lay out ground.**

195. **Burial-grounds, when to belong to town.**

§ 190. **Town-house.**—The electors of any town in which there shall not be a town-house, at any annual town meeting, or at a special town meeting lawfully called by the town clerk, may vote by ballot a sum of money not exceeding in dollars four times the number of electors in the town, for the purchase of a site and the building of a town-house, or for the purpose of contributing to the erection of a building for the joint use of the town and of an incorporated village within its limits. The board of supervisors of the county may cause the sum so voted to be collected with the other expenses of the town.

§ 191. **Erection and control of town-house.**—Sites shall be purchased and houses erected by the town board in the name of the town, and shall be controlled by the town board; and the electors may,

from time to time, vote such sum of money as may be necessary to keep any town-house in repair and insured, except where the building is to be erected within the limits of an incorporated village and the town is to contribute but a part of the expense of erecting the building, in which case the town board and the board of trustees of the village shall agree upon the terms and conditions of the use, management, control and repair of the portions of the town-house for town and village purposes respectively.

§ 192. **Lock-ups.**—The electors of each town, upon the application of ten freeholders of the town, may, by ballot at their annual town meeting, direct the erection of one or more houses of detention, or lock-ups, for the detention of persons committed by the magistrates thereof, and direct such sums to be raised in their town by tax, for the expense of building, or of maintaining the same, as they may deem necessary. Such houses of detention, or lock-ups, may be used for the purpose of temporarily keeping and confining all persons arrested by any constable or officer in the town prior to trial or examination, or committed by any magistrate of the town pending trial or examination before such magistrate, or after commitment to a county jail by a magistrate, when immediate removal to the county jail can not be made, and only until he can be conveniently removed to such jail.

§ 193. **Electors may choose trustees of burial-grounds.**—The electors of any town may, at an annual town meeting, choose three or five persons to act as a board of trustees of any burial-grounds within the limits of and belonging to the town, as

such electors may designate, and direct the supervisor of the town to convey by deed to such board of trustees, and their successors in office, for the purposes hereinafter mentioned, the lands already composing such grounds; and also any other lands that may be hereafter acquired for the purpose of enlarging such grounds. Such electors may also fill any vacancies that may occur in the board of trustees.

§ 194. Trustees to lay out ground.—Such board of trustees shall lay out into burial lots any grounds so conveyed to them; and within one year after the conveyance to them they shall cause to be recorded in the office of the clerk of the county in which they reside a plot or plots of the ground so laid out by them, which shall clearly indicate the number and location of the several lots, which plots shall be duly certified to, under the hands and seals of the chairman and secretary of the board, and acknowledged before an officer authorized to take proof and acknowledgment of deeds. They shall designate and set aside certain lots which shall be free for the interment of the remains of indigent persons, deceased, and shall sell and convey, by direction of a majority of the board, under the hands and seals of its chairman and secretary, burial lots, at such terms as may be agreed upon between the parties, and expend the moneys realized from such sale in improving and preserving the particular burial ground from the sale of whose lots the moneys were received.

§ 195. Burial-grounds, when to belong to town.—The title to every lot or piece of land which shall have been used by the inhabitants of any town in

this state as a cemetery or burial-ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject, in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting.

ARTICLE IX.

THE MUNICIPAL DEBT LAW.

SECTION 210. Annual reports to board of supervisors.

- 211. Form of reports.
- 212. Publication of reports.
- 213. Duplicate reports.
- 214. Cancellation of bonds.

§ 210. Annual reports to board of supervisors.—When a town has a public debt, consisting of bonds, or other evidence of debt issued on the credit of the town, the supervisor thereof, shall make a report to the board of supervisors of the county, at every annual session thereafter, of the amount of such indebtedness.

No. 40.—§ 210.

Annual Report of Town Indebtedness.

To the Board of Supervisors of County:

The undersigned, supervisor of the town of....., in said county, pursuant to sections 210 and 211 of the town law, hereby reports the amount of public indebtedness of said town as follows:

Bonds issued or debts contracted in aid of.	Rate of interest.	Act under which bonds were issued.	Amount unpaid at time of election of supervisor.	Amount of indebtedness paid at this date.	Amount coming due during my term of office.

Dated this....day of....., 18...

A B,
Supervisor.

§ 211. **Form of reports.**—Such report shall be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of the supervisor, and the amount of debt paid at the date of his report, and coming due during his term of office.

§ 212. **Publication of report.**—The report so made, shall be published in the annual report of the proceedings of the board of supervisors.

§ 213. **Duplicate reports.**—The supervisor shall also, at the expiration of his term of office, at the annual town meeting, make and present thereto, a duplicate copy of such report to the board of supervisors, including and adding thereto, the amount of bonds issued, and the amounts and interest paid, since the date of the report up to the day and date of his term of office, duly attested before a justice of the peace of his town, and which report shall be filed in the town clerk's office of the town, subject to the inspection, by an elector thereof.

§ 214. **Cancellation of bonds.**—All such bonds and coupons thereof paid, shall be canceled by the town board of the town, at a meeting thereof to be held for that purpose, within ten days previous to the annual town meeting; and a record thereof shall be filed, signed by the board, in the office of the clerk of the town.

ARTICLE X.

TOWN BUSINESS IN COUNTIES OF MORE THAN THREE HUNDRED THOUSAND INHABITANTS.

SECTION 220. Election of, and term of town officers.

221. Term of town clerk and collector.

222. Fiscal year; meeting of town board.

SECTION 223. Election districts.

- 224. Canvass; inspectors.
- 225. Canvass in case no justice present.
- 226. Town meeting, business of.
- 227. Notice to be published.
- 228. Resignations.
- 229. Vacancies.
- 230. Official oath and undertaking.
- 231. Term of office of constables.
- 232. Persons in office.

§ 220. Election of, and term of town officers.— Town officers required to be elected in counties containing more than three hundred thousand inhabitants, as determined by the last preceding federal or state enumeration of the inhabitants, taken prior to any election of town officers, except justices of the peace, shall hereafter be elected by ballot, by the electors of such towns respectively, at the general election held in such towns; and the term of office of the persons so elected, shall commence and terminate, on the first day of January each year, except as herein otherwise provided.

§ 221. The term of town clerk and collector.— The term of office of town clerk shall be three years from the first day of January, and of collector, three years from the first day of May next succeeding his election.

§ 222. Fiscal year; meeting of town boards.— The fiscal year in such towns shall commence on the first day of January then next preceding the annual town meeting. Town boards of such towns shall meet annually for the purpose of auditing the accounts of town officers at the office of the town clerk on the last Tuesday in December in each

year at two o'clock in the afternoon except when the same shall occur on the twenty-fifth day of the month, in which case such meeting shall be held on the following day; and the supervisor and all other town officers or board of town officers who receive or disburse any moneys belonging to the town, shall account for the same under oath to said town board annually at such meeting.

§ 223. Election districts.— Each of said towns containing more than five hundred electors shall comprise one or more election districts, as the supervisor, town clerk and assessors thereof may deem necessary or proper. There shall be provided at the polling places in each election district of such towns at the general election held therein a separate ballot-box to be marked with the word "Town" in which shall be deposited all ballots to be correspondingly indorsed and containing the names of all town officers to be chosen at such election, and which ballots shall be canvassed and counted immediately after the completion of the canvass of the votes in the other boxes used at such election, and the inspectors shall make one certificate or statement only of the result of such canvass of votes for town officers and forward the same, within twenty-four hours thereafter to the town clerk. Such election for town officers shall be conducted in the same manner as elections for state and county officers, and all provisions of law affecting such elections shall extend to the elections held under this article, so far as applicable, except as herein otherwise provided.

§ 224. Canvass; inspectors.— In each of such towns containing more than one polling district, the justices

of the peace shall attend at the office of the town clerk, on the second day after such election, at ten o'clock in the forenoon, and canvass the votes for town officers, as the same shall have been certified under the last preceding section, and the town clerk shall act as clerk in such canvass, and shall enter in his record a statement of the number of votes for each candidate in the several districts, and of the officers elected or chosen, which record shall be signed by him, and by the justice or justices acting as such canvassers. The person receiving the highest number of votes for the respective offices shall be deemed to be duly elected thereto, excepting only the inspectors of election for each election district; only two names for inspectors shall be placed on any one ballot, and the two receiving the greatest number of votes shall be declared elected, and the third inspector shall be selected by such justice or justices from the two persons in such election district who shall have the highest number of votes next to the two inspectors elected. In towns having but one election district, such selection of the third inspector shall be made by the town clerk; and the records of the votes cast, and of the town officers elected or chosen, shall be signed by him only.

§ 225. Canvass in case of justice present.—The justice or justices of the peace present at the time and place appointed under the last preceding section, shall proceed with the canvass as herein provided. If none shall be present, the town clerk shall appoint some suitable person, who shall be sworn by him faithfully to perform such duty; and if the town clerk be absent, the justice or justices present shall appoint a suitable person in his place, who shall be

sworn in like manner, and the persons so appointed shall possess all the powers, and be subject to all the duties and responsibilities of the officers in whose place they are appointed. If any of the returns shall not have been received, or shall be required to be sent to the inspectors for correction, an adjournment may be taken, from day to day, for the purpose of procuring the proper returns.

§ 226. **Town meeting, business of.**—Town meetings shall continue to be held in such towns as now provided by law for the election of justices of the peace, and for the transaction of such business as is usually done at such meetings, other than the election of town officers, and the voters shall have power to meet and vote on the same, or at any special town meeting, provided their names appear on the registry of the next preceding general election held in such election district, or provided they shall have been duly registered, as herein provided, and not otherwise. The several boards of registry shall give ten days' notice by posting the same in ten or more public places in each election district of said towns, of their intention to meet for the purpose of registering the voters of such district whose names do not appear on such registry, which meeting shall be held on one day only in each election district, from nine o'clock in the morning until nine o'clock in the evening, not less than five nor more than fifteen days preceding such annual or special town meeting. Such annual town meeting shall be held at twelve o'clock noon and continue until the final completion of the business, not later than two o'clock in the afternoon, and in towns having more than one general district, not later than sunset.

§ 227. Notice to be published.—The notices required by law to be published by the town officers of the time and place of holding the general elections in said towns shall include a statement of the several town officers to be chosen thereat, which statement shall be furnished to them for such purpose by the town clerk; but no such election shall be held illegal for want of proper notice.

§ 228. Resignations.—The supervisor and justices of the peace of a town, or a majority of them, may accept the resignation of any town officer therein, and make appointments to fill vacancies that may be caused thereby, or by death, removal from the town, refusal to serve or failure to qualify, and shall file the certificate of every such appointment forthwith in the office of the town clerk. The persons so appointed shall enter upon their duties as soon as they shall have duly qualified, and shall serve until the first day of January, or, in case of collectors, until the first day of May next succeeding the then ensuing general election.

§ 229. Vacancies.—Persons elected to supply vacancies in the office of supervisor, town clerk, collector and other offices in such towns, the full term of which are more than one year, shall be deemed elected for the full term thereof commencing on the first day of January, and collectors on the first day of May, next after their election, except justices of the peace, assessors, commissioners of highways, commissioners of excise, and other like officers of whom only one is elected in each year, in which last-named cases the persons elected to fill vacancies shall be deemed elected to serve from the first day

of January or May, as aforesaid, and only for the then remaining and unexpired portion of the vacated term.

§ 230. **Official oath and undertaking.**—The supervisor and all other town officers hereafter elected or appointed in said towns, except justices of the peace and inspectors of election, shall, before the commencement of the term for which they were elected or appointed, or if appointed to fill vacancies, within ten days after their appointment, severally take the constitutional oath of office, and file the same in the office of the town clerk; and also within the same time file therein the undertakings, if any, which are required to be given by them for the faithful discharge of their duties. The undertaking of collectors shall be given, as in other towns of ~~this~~ state. If the collector, or any of such officers, shall fail, neglect, refuse or omit to comply with the provisions of this section, a vacancy shall thereupon be created, which shall be filled by appointment, in the manner prescribed by this article; but none of the provisions of this section shall be deemed to extend to the bonds or undertakings of supervisors for school moneys, which bonds or undertakings may be given by him after entering upon the duties of his office, in the manner now provided by law.

§ 231. **Term of office of constables.**—The term of office of constables in such towns shall be five years from the first day of January, at the first election to be held in a town, pursuant to this article, which town shall not have constables, heretofore elected under the provisions of chapter five hundred and

sixty-four of the laws of eighteen hundred and eighty-one. Five constables shall be elected, who shall hold their offices for one, two, three, four and five years, respectively, which shall be determined by the number of votes cast for each; those receiving the highest number of votes to have the longest term. In case of a tie vote, the town clerk shall select and decide; and thereafter only one constable shall be elected, in each year, for the full term of five years.

§ 232. **Persons in office.**— Nothing herein contained shall affect the term of office of any town officer elected or appointed in any town before the provisions of this article shall apply to such town, but such terms shall be and continue until the expiration of the term for which such officers were elected or appointed, and at the expiration thereof their successors elected pursuant to this article shall enter upon the discharge of their duties and serve until the first day of January or May, at the expiration of the term for which they shall have been severally elected.

ARTICLE XI.

REPEALING AND OTHER CLAUSES.

SECTION 240. Laws repealed.

241. Saving clause.

242. Construction.

243. When to take effect
Schedule.

§ 240. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall

not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

§ 241. **Saving clause.**—The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done or right accruing, accrued or required, or penalty, forfeiture or punishment incurred prior to the time when this act takes effect, under or by virtue of the laws so repealed, but the same may be asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such laws had not been repealed; and all actions or proceedings, civil or criminal, commenced under or by virtue of the laws so repealed and pending February twenty-eight, eighteen hundred and ninety-one, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing unless it shall be otherwise specially provided by law.

§ 242. **Construction.**—The provisions of this chapter, so far as they are substantially the same as those laws existing on February twenty-eight, eighteen hundred and ninety-one, shall be construed as a continuation of such laws, modified or amended, according to the language employed in this chapter, and not as new enactments; and references in laws not repealed, to provisions of law incorporated into this chapter and repealed, shall be construed as applying to the provisions so incorporated. Nothing in this chapter shall be construed to amend or repeal any provision of the Penal or Criminal code.

§ 243. When to take effect.—This chapter shall take effect on the first day of March, eighteen hundred and ninety-one, except in towns in which the annual town meeting for eighteen hundred and ninety-one shall be held on or subsequently to March first, in which towns it shall take effect May first, eighteen hundred and ninety-one.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.	Part I, chap. 5, title 4, article 4	Sections 35 and 37 to 46, in- clusive.
Revised Statutes.	Part I, chap. 11, titles 1, 2, 3, 4, 5, 6 and 7	All except sec- tions 2 to 21, inclusive, in title 7.
Revised Statutes.	Part I, chap. 20, title 12..	All.
Revised Statutes.	Part I, chap. 20, title 14..	Sections 2 & 4.
Revised Statutes.	Part I, chap. 20, title 15..	All except sec- tions 12 to 21, inclusive.
Laws of	Chapter	SECTIONS.
1829.....	356.....	All.
1830.....	289.....	2.
1830.....	290.....	All.
1830.....	320.....	3.
1831.....	52.....	All.
1832.....	109.....	All.
1832.....	222.....	All.
1833.....	270.....	All.
1834.....	16.....	All.
1838.....	172.....	All.
1838.....	261.....	All.
1839.....	389.....	All.
1840.....	305.....	All.
1845.....	180.....	1, 2, 3, 4, 23, 24, 25, 26 and 27.
1845.....	244.....	All.
1847.....	197.....	All.
1847.....	455.....	1, 2, 13 and 24.
1847.....	490.....	2.
1848.....	343.....	All.
1850.....	319.....	All.
1859.....	107.....	All.
1859.....	476.....	All.
1860.....	58.....	All.
1863.....	172.....	All.
1866.....	30.....	1.
1866.....	78.....	All.
1866.....	534.....	All.
1866.....	540.....	All.

SCHEDULE OF LAWS REPEALED — (Concluded).

Laws of	Chapter	SECTIONS.
1866.....	832.....	All.
1868.....	721.....	1.
1869.....	493.....	All.
1870.....	242.....	2.
1870.....	552.....	All.
1871.....	635.....	All.
1872.....	377.....	All.
1872.....	513.....	All.
1872.....	788.....	All.
1873.....	46.....	All.
1873.....	722.....	All.
1874.....	173.....	All.
1874.....	444.....	All.
1874.....	543.....	All.
1875.....	166.....	All.
1878.....	107.....	All.
1879.....	67.....	All.
1879.....	267.....	All.
1881.....	123.....	All.
1881.....	391.....	All.
1881.....	564.....	All.
1883.....	122.....	All.
1884.....	456.....	All.
1885.....	82.....	All.
1885.....	390.....	All.
1886.....	210.....	All.
1886.....	259.....	All.
1886.....	461.....	All.
1886.....	585.....	All.
1887.....	108.....	All.
1887.....	704.....	All.
1888.....	465.....	All.
1888.....	488.....	All.
1889.....	135.....	All.

STATE OF NEW YORK, } ss. 1
OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

FRANK RICE,

Secretary of State.

Supplemental Acts Relating to Town and Highway Laws.

CHAPTER 163.

AN ACT to prohibit excise commissioners, excise inspectors, police officials or their subordinates from being interested in the manufacture or sale of any spirituous or malt liquors, ales, wines or beer.

APPROVED by the Governor April 22, 1890. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Interest in manufacture or sale of liquors, etc., prohibited.—It shall be unlawful for any excise commissioner, excise inspector, police commissioner, police inspector, captain, sergeant, roundsman, patrolman or other police official or subordinate of any police department or any commissioner of excise or inspector of excise, in the several villages, towns and cities of this state, to be either directly or indirectly interested in the manufacture or sale of spirituous or malt liquors, ales, wines or beer or to offer for sale, or recommend to any dealer therein, any spirituous or malt liquors, ales, wines or beer.

§ 2. Presumptive evidence thereof.—The solicitation or recommendation made to any dealer therein, to purchase any spirituous or malt liquors, ales,

wines or beer by any excise commissioner, excise inspector, police official or subordinate as hereinabove described, shall be presumptive evidence of such official or subordinate being interested in the manufacture or sale of such spirituous or malt liquors, ales, wine or beer.

§ 3. Officers to take oath — False statements. — Filing of oaths — Disqualification. —Every excise commissioner, excise inspector, police commissioner, or other head of police, police inspector, captain, sergeant, roundsman, patrolman or other police official or subordinate of any police department in the several villages and cities of this state, shall, within thirty days after the passage of this act, make and subscribe an oath before an officer duly authorized to take the acknowledgment of deeds, to the effect that he is neither directly or indirectly interested in the manufacture or sale of any spirituous or malt liquors, ales, wine or beer, and such of the above named officers as are hereafter elected or appointed shall make and subscribe such oath and file the same as herein provided, and a false statement in this respect thus made under oath by any excise commissioner, excise inspector, police official or subordinate hereinabove mentioned shall be deemed perjury, and be punishable as such. Said oath shall be filed in the clerk's office of the town or village or with the police department of a city. A failure to take the oath in this section prescribed shall disqualify any one from holding or debar any one from continuing to hold, any office or position mentioned in this act.

§ 4. This act shall take effect immediately.

CHAPTER 223.

AN ACT to authorize towns to raise money to defray the expenses of the proper observance of memorial or decoration day.

APPROVED by the Governor April 29, 1890. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. It shall be lawful for the electors of any town in this state, at any regular town meeting, to vote by ballot any sum of money, not exceeding one hundred dollars in any year, to be determined by a majority of all the electors voting at such town meeting, for the purpose of defraying the expense of the proper observance of memorial or decoration day ; which amount shall be assessed, levied and collected in the same manner as other expenses of said town are assessed, levied and collected, and shall be paid to the supervisor of such town and be disbursed by him in such manner as the electors of such town may direct, upon vouchers properly receipted and audited by the town board of such town ; except that in any town in which there may be a post of the grand army of the republic, such post may direct the manner and extent of such observance, and the supervisor shall pay the expense thereof upon the order or orders of the commander and quartermaster of such post, which orders shall be his vouchers for such payment ; and in case there may be two or more posts of the grand army of the republic in any such town, the commanders and quartermasters of such posts, by concurrent action, shall direct the supervisor of such town what pro-

portion of such money so raised shall be expended by each of such posts, which proportion shall be paid by such supervisor upon the order or orders of the commander and quartermaster of each of such posts.

§ 2. This act shall take effect immediately.

CHAPTER 291

AN ACT to authorize towns to raise additional money for highway purposes and to prevent snow blockade of highways by the substitution of wire for other fences along the same.

BECAME a law without the approval of the Governor, in accordance with the provisions of article four, section nine of the Constitution, May 6, 1890. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. It shall be lawful for the commissioner of highways of any town in this state to apply in open town meeting for a vote authorizing such sum, not to exceed three hundred dollars in any one year, to be raised, in addition to the sums now allowed by law, as they may deem necessary for the purpose specified in the third section of this act. The same notice shall be given by the commissioners of their intention to apply for the raising of such additional sum as is now required by law for the raising of money for roads and bridges, above the amount of two hundred and fifty dollars.

§ 2. If the town meeting shall, by their votes, determine that a sum shall be raised for the purpose specified in this act, the proceedings for certifying and levying, collecting and paying the same shall be

in all respects the same as now provided by law for the raising and paying over of money for roads and bridges, above the amount of two hundred and fifty dollars.

§ 3. The commissioners of highways shall expend the money raised under the provisions of this act in the purchase of fence wire, in the same manner as other supplies for highway purposes are by law required to be purchased, and no part of such money shall be expended, except for the purchase of fence wire as aforesaid; and the said commissioners are hereby authorized to contract with the owners of the lands lying along the highways of their respective towns, at such points as are liable to snow blockade, for the removal of the fences now standing along the boundaries of such highways, and the replacing of such fences with wire fences. And they may contract to deliver to said landowners, fence wire to be used in the construction of such fences, without charge to said landowners, at the place of purchase, but they shall not agree to pay any part of the cost of the removal or construction called for by said contracts, or to make any payment to said land-owners as a compensation for the construction of fences.

§ 4. The fences to be built under the provisions of this act, shall be of four strands of wire with a substantial bar of wood at the top; and the construction of said fences, and the size of said top bars and of the posts and supports of said fences, and their distance apart shall be such as said commissioners shall prescribe. Whenever such fence or fences shall become so out of repair as to be dangerous to animals passing along the highways, it shall be the duty of the owner or owners of said fence or fences to immediately repair or remove the same.

§ 5. Whenever the commissioner of highways of any town shall contract for the removal of any fence, under the provisions of this act, they shall file in the office of the town clerk of said town, a description of that portion of the highway to which said contract shall apply, and thereafter, it shall not be lawful for any person to replace the fence so contracted to be removed, with any fence liable to cause the drifting of snow.

§ 6. This act shall take effect immediately.

CHAPTER 332.

AN ACT to authorize the supervisor, justices of the peace and town clerk of any town having a population of more than three thousand, to license and regulate all public hacks, vehicles, venders, shows, concerts and public amusements in such town.

APPROVED by the Governor May 15, 1890. Passed, three-fifth being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The supervisor, justices of the peace and town clerk of any town having a population as shown by the last federal or state enumeration, of more than three thousand inhabitants residing outside of an incorporated city or village, are hereby authorized and empowered to license and regulate all public hacks, vehicles, venders, shows, concerts and public amusements in such town, outside of an incorporated city or village, and to fix the fee to be paid for the persons so licensed to said officers,

* So in the original.

which moneys so collected shall be paid over to the supervisor of such town within thirty days after the receipt of the same, and the said supervisor shall pay the same over to the commissioners of highways of such town, to be applied to the necessary repairs of the roads and highways of such town, after deducting the necessary expenses for carrying out the provisions of this act.

§ 2. The said officers shall have power to make and establish such rules, regulations and ordinances not inconsistent with the laws of this state, as they may deem necessary for the proper regulation of such hacks, vehicles, venders, shows, concerts and public amusements. Such rules, regulations and ordinances shall be posted in at least ten public places in such town.

§ 3. Said officers shall have power to and may prescribe the penalty for a violation of any rule, regulation or ordinance which they may establish, which penalty shall be recovered in the manner hereinafter prescribed, and when recovered shall be paid over to the supervisor of such town within thirty days after the receipt of the same and said supervisor shall pay over such moneys so received to the same parties as the fees received from licenses are hereinbefore provided for. Such penalty shall in no case exceed the sum of twenty-five dollars.

§ 4. All persons violating any rule, regulation or ordinance established by said officers may be proceeded against summarily before any justice of the peace of such town, such proceedings to be commenced by warrant upon proper proof and shall be continued and conducted in the same manner as criminal proceedings are now conducted in cases

triable before such justices or either of them as a court of special sessions, but all persons charged with such offense shall have the right to waive an examination or to elect to go before any higher court or tribunal.

§ 5. Such justices shall have authority to fine any person offending as aforesaid, a sum equal to the penalty prescribed by the ordinances and may sentence such person, in default of payment, to be confined in the county jail for a period not exceeding ten days and not exceeding the penalty prescribed as aforesaid, and all laws relating to trials by courts of special sessions in the such town not inconsistent herewith in the proceedings hereby authorized, the offense shall be deemed to be sufficiently described by stating the ordinance and the section thereof claimed to be violated.

§ 6. This act shall take effect immediately.

CHAPTER 420.

AN ACT relating to accounts of the overseers of the poor, and the action to be taken upon such accounts by the boards of town auditors in the various towns of the state.

APPROVED by the Governor May 24, 1890. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The overseers of the poor in the various towns of the state who receive and expend money for the relief and support of the indigent poor in their respective towns shall keep books to be procured at town expense in which they shall enter the

name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such person a pauper so far as the same can be ascertained. They shall also enter upon such books a statement of all moneys received by them, when and from whom and on what account received, and of all moneys paid out by them, when and to whom paid and on what authority; also a statement of all debts contracted by them as such overseers, the names of the person with whom such debts were contracted, the amount and consideration of each item, the names of the persons for whose benefit the debts were contracted, and if the same have been paid, the time and manner of such payments.

§ 2. On the Tuesday next preceding the annual town meeting in every year the overseers of the poor shall lay the said books before the board of town auditors in their town together with a just and true itemized account of all moneys received and expended by them for the use of the poor since the last preceding meeting of the said board of town auditors. The said board of town auditors shall compare said account with the entries in the books aforesaid, and shall examine the vouchers in support thereof, and may examine the overseers of the poor, under oath, with reference to said account. They shall thereupon audit and settle the same, and state the balance due from the overseers or to them, as the case may be. The said account shall be filed with the town clerk, and at every annual town meeting the town clerk shall produce such account for the next preceding year, and read the same, if required by the meeting. The overseers of the poor

shall have said books present each year, at the annual town meeting, subject to inspection by voters of the town, and the entries thereon for the preceding year shall be there read publicly, at the time reports of other town officers are presented, if required by a resolution adopted at such meeting.

§ 3. Any overseer of the poor who shall neglect or refuse to comply with any provision of this act shall be guilty of a misdemeanor.

§ 4. This act shall take effect immediately.

CHAPTER 116.

AN ACT to amend section one of title one of chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, entitled "An act for the incorporation of villages."

BECAME a law without the approval of the Governor, in accordance with the provisions of article four, section nine of the Constitution, March 31, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of title one of chapter two hundred and ninety-one of the laws of eighteen hundred and seventy, entitled "An act for the incorporation of villages," is hereby amended so as to read as follows:

§ 1. Any part of any town or towns, not in any incorporated village, containing a resident population of not less than three hundred persons, and if it shall include in its boundaries a territory of more than one square mile in extent, containing a resident population of not less than three hundred persons in each, and every additional square mile of territory

included within such boundaries, may be incorporated as a village under the provisions of this act, by complying therewith, provided in case of any or part of any town or towns not containing three hundred resident population, but including in its boundaries a territory not less than one-half a square mile in extent, and a park of not less than forty acres used for a summer resort owned by an association incorporated by the state, upon filing in the county clerk's office of each county a map, as provided in section two of this title, and a petition signed by every property owner, liable to taxation, and every voter in such territory properly acknowledged before some officer authorized to administer oaths in favor of such corporation, shall thereafter be incorporated as a village under this act by the name designated in such petition, and in such case and in no other, may proceed to elect village officers, at once as provided in section eighteen of this title, and the first three names appearing in such petition shall constitute the first board of inspectors.

§ 2. This act shall take effect immediately.

CHAPTER 164.

AN ACT to extend the powers of town boards.

APPROVED by the Governor April 10, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The supervisor, town clerk and justices of the peace or a majority thereof in any town in this State, may expend any surplus moneys for

which no provision for expenditure is made, belonging to said town, for the purposes of redemption of outstanding bonds or for improvements in said town.

§ 2. All acts or parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect immediately.

CHAPTER 309.

AN Act to authorize overseers of highways to acquire gravel for highway purposes.

APPROVED by the Governor May 4, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. The overseers of highways of any road district of the state, with the consent of the commissioners of highways of the town, and the approval of the town board, shall have power to purchase of the owner of any gravel bed or pit within the town, gravel for the purpose of grading, repairing or otherwise improving the highways of the town at a price per cubic yard approved by said commissioners and town board. If such overseer can not agree with any such owner for the purchase of such gravel, the overseer, with the consent of such commissioners and the approval of such town board, shall have power to acquire by condemnation the right to take and use such gravel, provided, no gravel shall be so condemned within one thousand feet of any house or barn, or taken from any lawn, orchard or vineyard, and to remove the same from such bed or pit for the purpose of grading, repairing or otherwise

improving such highways, together with the right of way to and from such bed or pit to be used for the purpose of such removal. The right to use such gravel or to take the same from any such bed or pit may be acquired under this section for two or more or all of the road districts in common; and if acquired for two or more or all of the districts, the commissioners of highways, with the approval of the town board, must make the purchase or acquire such right by condemnation. The amount agreed to be paid upon any such purchase, and the amount adjudged to be paid upon any such condemnation shall be paid by the districts in which such gravel shall be used, but the costs and expenses of the proceedings for the condemnation incurred by the overseer, shall be a charge upon the town, and shall be audited by the town board, and paid the same as other town charges.

§ 2. If the town shall abandon for the period of three years any right so acquired to use any gravel bed or pit or to take gravel therefrom, or if the overseer of highways of any such district wherein any such right shall have been so acquired, or the commissioners of highways of the town shall cease to use the same for the purposes for which it was acquired, the right of the town and of such overseer and commissioners thereto shall cease, and the ownership thereof shall revert to and become vested in the owner of such bed or pit at the time such right was acquired, or his heirs or assigns.

§ 3. This act shall take effect immediately.

CHAPTER 310.

AN ACT to encourage and facilitate the draining of agricultural lands.

APPROVED by the Governor May 4, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Whenever any owner or owners of agricultural lands desire to drain the same, or to reclaim and secure for tillage or other farming purposes, any low, marshy, or wet lands, by draining the same, the said owner or as many owners of such land as may join for said purpose under any agreement, contract or writing entered into by them, may, with the consent and under the supervision of the commissioners of highways of any town wherein the said lands are located, lay out and construct the necessary drains or ditches for draining such lands, so as to connect with and flow into the drains, ditches or other water-courses along or across any public road or highway, or through or under any sluice, or under any bridge upon any public road, or highway, provided that the draining of any land in such manner shall not endanger any such road or highway, or impede travel thereon on account of overflow. In case any additional quantity of water thus emptied into the highway ditches or other course for carrying off water be in excess of their usual capacity, the commissioners of highways are hereby authorized to so enlarge or cause to be enlarged, the said highway ditches or other courses that they can receive the waters thus drained into

them, without damage, or danger of damage or obstruction to the highway.

§ 2. In case of any difference or disagreement arising over the laying out and construction of drains or ditches by the owners of adjoining lands, who have previously entered into an agreement for the drainage of any such lands possessed by them, as in the first section of this act mentioned, which agreement shall be in writing, the said owners may make in writing, in which all said owners interested shall unite, an application to the fence viewers of the town wherein the land to be drained is situated, to hear and determine the matters of difference between said owners, upon submission to said fence viewers, the said matters of difference, the same as touching any division of lands or farm lines for the building and maintaining of line fences, or any other matter which may now be by law submitted to said fence viewers. And the said fence viewers shall, before making their report, view the premises or lands included within the area of the proposed drainage, and give opportunity to any party interested to be heard. And any agreement made by any of said owners for said submission to the said fence viewers, shall be held and construed as legal and binding upon the parties thereto, as any contract or agreement made for any lawful purpose.

§ 3. The conclusions and findings of said fence viewers shall be in writing, one copy of which shall be delivered to the applicants in every such proceeding, and one copy shall be filed in the office of the clerk of the town wherein the land proposed to be drained is located. The compensation or fees of said fence viewers in such proceeding, shall be the

same as now allowed by law, in the case of establishing and maintaining line-fences and shall be paid by the parties making the application hereinbefore mentioned.

§ 4. Where any water or drainage has been carried or directed by owners of lands as in this act provided, across, through or under said land to a point of intersection with the natural flow, drainage or outlet of water, upon the surface, along or by the side of any lands adjoining, but not embraced within the portion or district of land so drained as by this act provided, the same shall not be deemed as a diversion of any drainage or flow of water from the lands included within the area so drained.

§ 5. It shall be the duty of the fence viewers to act when called upon, in the manner and for the purpose hereinbefore provided, and they shall meet and proceed upon any application made as provided, within ten days after receiving the same; and said application shall contain a particular statement of all the matters and things upon which their action is requested, within the meaning of this act, by the parties to said application, but no fence viewer who is an owner of any land or has any personal interest in any matter involved in the proceeding, shall be competent to act; and in case of such disqualification of any said officer, his place may be filled by any justice of the peace of the town who may not be for the same reason disqualified, and whom the persons uniting in the application for such proceeding as provided, may agree upon.

§ 6. This act shall take effect immediately.

CHAPTER 212.

AN ACT to amend section four of chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, entitled "An act in relation to highways, constituting chapter nineteen of the general laws."

APPROVED by the Governor April 20, 1891. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows :

SECTION 1. Highway law amended.—Section four of chapter five hundred and sixty-eight of the laws of eighteen hundred and ninety, entitled "An act in relation to highways constituting chapter nineteen of the general laws" is hereby amended by adding an additional subdivision to be known as subdivision eight to read as follows :

8. Powers of highway commissioners as to encroachment of streams, etc.—Have power to enter upon the lands of any person adjoining any of the rivers, streams or creeks of the state, drive piles, throw up embankments, and perform such other labor as may be necessary upon the banks of such rivers, streams or creeks for the purpose of keeping them or any of them within their proper channels and preventing their encroachment upon any of the highways of the state, and to protect such highways and the property of the town from damages by reason of such rivers, streams or creeks washing away their embankments, or changing the location of the channels, and to agree with the owner of any such lands upon the amount of damages, if any, sustained by him in consequence of

such entry upon his lands and the performance of the work herein authorized, and the amount of the damages so agreed upon shall be a town charge, and shall be audited and paid in the same manner as other town charges. If the commissioners are unable to agree with such owner upon the amount of damages thus sustained, the amount thereof shall be ascertained and determined and paid in the same manner as damages for the laying out and opening of highways are required by law to be ascertained, determined and paid, where the commissioners and land owner are unable to agree upon the amount thereof.

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